

## 16B C.J.S. Constitutional Law V XIV A Refs.

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### A. In General

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## Research References

### A.L.R. Library

A.L.R. Index, Association, Freedom of  
A.L.R. Index, Civil Rights and Discrimination  
A.L.R. Index, Constitutional Law  
A.L.R. Index, Fifth Amendment  
A.L.R. Index, First Amendment  
A.L.R. Index, Fourteenth Amendment  
A.L.R. Index, Ninth Amendment  
A.L.R. Index, Privacy  
A.L.R. Index, State Action  
West's A.L.R. Digest, [Constitutional Law](#) 🔑 [1080](#), [1093](#), [1094](#), [1210](#) to [1218](#), [1225](#) to [1275](#), [1445](#)

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## 16B C.J.S. Constitutional Law § 1164

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### A. In General

##### 1. Introduction to Right of Privacy

## § 1164. Right of privacy; general considerations

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1210 to 1218

**Although the Federal Constitution does not explicitly mention a right of privacy, privacy has been recognized by the courts as a fundamental constitutional right which derives from more specific constitutional guaranties.**

The Federal Constitution does not explicitly mention a right of privacy.<sup>1</sup> Thus, the protection of a person's general right to privacy, that is, his or her right to be let alone by other people,<sup>2</sup> is, like the protection of his or her property and very life, left largely to the laws of the individual states.<sup>3</sup> Nevertheless, the courts have recognized that a right of personal privacy, or a guaranty of certain areas, or zones, of privacy, does exist under the Federal Constitution<sup>4</sup> and that a right to be free from unwanted governmental intrusion is implicit in it.<sup>5</sup> A constitutional right to privacy is, however, generally only recognized when certain fundamental rights, such as liberty or property rights are also affected.<sup>6</sup>

The zones of privacy created by the more specific constitutional guaranties<sup>7</sup> impose limits on governmental power.<sup>8</sup> Inasmuch as the right of privacy exists only in conjunction with specific constitutional guaranties that serve as substantive bases for the privacy rights,<sup>9</sup> if a zone of privacy cannot be grounded on neutral principles rooted in one of these constitutional sources,

it simply may not enjoy constitutional protection.<sup>10</sup> Hence, only if specific constitutional provisions protect personal privacy from governmental invasion will a person be able to raise the Constitution as a shield against the practice complained of.<sup>11</sup>

The courts have found specific sources in the Federal Constitution for zones of privacy in various amendments to the Constitution,<sup>12</sup> including the First,<sup>13</sup> Third,<sup>14</sup> Fourth,<sup>15</sup> Fifth,<sup>16</sup> and Ninth<sup>17</sup> Amendments, as well as in the penumbras of the Bill of Rights<sup>18</sup> and the concept of liberty guaranteed by the first section of the Fourteenth Amendment.<sup>19</sup> The constitutional right of privacy must generally be interpreted, construed, and applied in the light of other constitutional guaranties and not in isolation.<sup>20</sup>

### *State constitutions.*

The right of privacy is incorporated into the constitutions of particular states,<sup>21</sup> and the elevation of the right to be free from invasions of privacy to constitutional status is apparently intended by these states to be an expansion of the privacy right.<sup>22</sup> The state constitution may provide a broader right of privacy than that found in the Federal Constitution.<sup>23</sup> State constitution privacy provisions are read in pari materia with the Federal Constitution.<sup>24</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Legitimate governmental interests combined with protections against public dissemination of sensitive information can foreclose a violation of the federal constitutional right to privacy. [Endy v. County of Los Angeles](#), 975 F.3d 757 (9th Cir. 2020).

Not only is the state constitutional right of privacy embodied in explicit constitutional language not present in the federal Constitution, but in many contexts, the scope and application of the state constitutional right of privacy is broader and more protective of privacy than the federal constitutional right of privacy as interpreted by the federal courts. [Cal. Const. art. 1, § 1](#). [Donorovich-Odonnell v. Harris](#), 241 Cal. App. 4th 1118, 194 Cal. Rptr. 3d 579 (4th Dist. 2015).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—[Carey v. Population Services, Intern.](#), 431 U.S. 678, 97 S. Ct. 2010, 52 L. Ed. 2d 675 (1977); [Paul v. Davis](#), 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976); [Roe v. Wade](#), 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973); [C.N. v. Ridgewood Bd. of Educ.](#), 430 F.3d 159, 203 Ed. Law Rep. 468 (3d Cir. 2005).  
Colo.—[Augustin v. Barnes](#), 626 P.2d 625 (Colo. 1981).  
Md.—[Doe v. Department of Public Safety and Correctional Services](#), 185 Md. App. 625, 971 A.2d 975 (2009).
- 2 Fla.—[D.M.T. v. T.M.H.](#), 129 So. 3d 320 (Fla. 2013).  
Ga.—[In re J.M.](#), 276 Ga. 88, 575 S.E.2d 441 (2003).
- 3 U.S.—[Katz v. U.S.](#), 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).  
Fla.—[Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.](#), 379 So. 2d 633 (Fla. 1980).
- 4 U.S.—[Runyon v. McCrary](#), 427 U.S. 160, 96 S. Ct. 2586, 49 L. Ed. 2d 415 (1976); [Roe v. Wade](#), 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973); [Griswold v. Connecticut](#), 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965); [C.N. v. Ridgewood Bd. of Educ.](#), 430 F.3d 159, 203 Ed. Law Rep. 468 (3d Cir. 2005).

Md.—*Doe v. Department of Public Safety and Correctional Services*, 185 Md. App. 625, 971 A.2d 975 (2009).

Pa.—*McCusker v. W.C.A.B. (Rushton Min. Co.)*, 536 Pa. 380, 639 A.2d 776 (1994).

Colo.—*Augustin v. Barnes*, 626 P.2d 625 (Colo. 1981).

U.S.—*Wurzelbacher v. Jones-Kelley*, 675 F.3d 580 (6th Cir. 2012).

U.S.—*Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976); *Katz v. U.S.*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967); *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965); *Garcia v. U.S.*, 666 F.2d 960 (5th Cir. 1982).

U.S.—*Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L. Ed. 2d 405 (1976).

U.S.—*National Organization for Reform of Marijuana Laws (NORML) v. Bell*, 488 F. Supp. 123 (D.D.C. 1980).

U.S.—*Lambert v. Hartman*, 517 F.3d 433 (6th Cir. 2008); *U.S. v. Choate*, 576 F.2d 165, 57 A.L.R. Fed. 678 (9th Cir. 1978).

U.S.—*U.S. v. Choate*, 576 F.2d 165, 57 A.L.R. Fed. 678 (9th Cir. 1978).

U.S.—*C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 203 Ed. Law Rep. 468 (3d Cir. 2005).

U.S.—*Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 180 L. Ed. 2d 544, 67 A.L.R.6th 755 (2011); *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973); *Dible v. City of Chandler*, 515 F.3d 918 (9th Cir. 2008).  
Colo.—*Augustin v. Barnes*, 626 P.2d 625 (Colo. 1981).

U.S.—*Katz v. U.S.*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967); *U.S. v. Choate*, 576 F.2d 165, 57 A.L.R. Fed. 678 (9th Cir. 1978).

#### **Interests protected not limited to fee ownership**

U.S.—*Engblom v. Carey*, 677 F.2d 957 (2d Cir. 1982).

U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973); *Katz v. U.S.*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).

Conn.—*State v. Russo*, 259 Conn. 436, 790 A.2d 1132 (2002).

U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973); *Katz v. U.S.*, 389 U.S. 347, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967).

Colo.—*Augustin v. Barnes*, 626 P.2d 625 (Colo. 1981).

U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).

Colo.—*Augustin v. Barnes*, 626 P.2d 625 (Colo. 1981).

U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973); *Griswold v. Connecticut*, 381 U.S. 479, 85 S. Ct. 1678, 14 L. Ed. 2d 510 (1965).

Colo.—*Augustin v. Barnes*, 626 P.2d 625 (Colo. 1981).

U.S.—*Carey v. Population Services, Intern.*, 431 U.S. 678, 97 S. Ct. 2010, 52 L. Ed. 2d 675 (1977); *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).

Conn.—*State v. Russo*, 259 Conn. 436, 790 A.2d 1132 (2002).

#### **Derivation of right**

Alaska—*Matter of A.B.*, 791 P.2d 615 (Alaska 1990).

Mont.—*State ex rel. Zander v. District Court of Fourth Judicial Dist., In and For Missoula County*, 180 Mont. 548, 591 P.2d 656 (1979).

Ill.—*Hope Clinic for Women, Ltd. v. Flores*, 2013 IL 112673, 372 Ill. Dec. 255, 991 N.E.2d 745 (Ill. 2013).

La.—*Beckett v. Serpas*, 112 So. 3d 348 (La. Ct. App. 4th Cir. 2013).

Mont.—*Montana Shooting Sports Ass'n, Inc. v. State*, 2010 MT 8, 355 Mont. 49, 224 P.3d 1240 (2010).

Wash.—*State v. Reeder*, 181 Wash. App. 897, 330 P.3d 786 (Div. 1 2014).

Fla.—*D.M.T. v. T.M.H.*, 129 So. 3d 320 (Fla. 2013).

#### **Express recognition of zone of personal privacy**

Ill.—*People v. Cornelius*, 213 Ill. 2d 178, 290 Ill. Dec. 237, 821 N.E.2d 288 (2004).

#### **Purpose**

The primary purpose of a state constitution's privacy clause is to protect the citizens' personal privacy and dignity against unwarranted intrusions by the State.

Alaska—*State v. Planned Parenthood of Alaska*, 171 P.3d 577 (Alaska 2007).

Alaska—*State v. Planned Parenthood of Alaska*, 171 P.3d 577 (Alaska 2007).

Cal.—[Digital Music News LLC v. Superior Court](#), 226 Cal. App. 4th 216, 171 Cal. Rptr. 3d 799 (2d Dist. 2014).

Fla.—[D.M.T. v. T.M.H.](#), 129 So. 3d 320 (Fla. 2013).

Haw.—[State v. Mariano](#), 114 Haw. 271, 160 P.3d 1258 (Ct. App. 2007).

Mont.—[State v. Deshaw](#), 2012 MT 284, 367 Mont. 218, 291 P.3d 561 (2012).

Wash.—[State v. Ruem](#), 179 Wash. 2d 195, 313 P.3d 1156 (2013).

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Md.—[Doe v. Department of Public Safety and Correctional Services](#), 185 Md. App. 625, 971 A.2d 975 (2009).

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## 16B C.J.S. Constitutional Law § 1165

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### A. In General

##### 1. Introduction to Right of Privacy

## § 1165. Waiver or loss of right of privacy

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1210 to 1218

**The constitutional right of privacy, like other personal rights, may be lost by express or implied waiver or consent or by a course of conduct that prevents its assertion.**

The constitutional right of privacy, like other personal rights, may be lost by express or implied waiver or consent or by a course of conduct that prevents its assertion.<sup>1</sup> Thus, the right of privacy may be surrendered by public display<sup>2</sup> or public disclosure<sup>3</sup> since such public display or disclosure dissolves the reasonable expectation of privacy.<sup>4</sup> Similarly, whatever the scope of the right of privacy in terms of the dissemination of information by one person regarding another person, the interests in privacy fade when the information involved already appears on the public record.<sup>5</sup>

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### Footnotes

- <sup>1</sup> La.—[Parish Nat. Bank v. Lane](#), 397 So. 2d 1282 (La. 1981).
- <sup>2</sup> U.S.—[Lovisi v. Slayton](#), 539 F.2d 349 (4th Cir. 1976).

- 3 U.S.—*Johnson v. San Jacinto Jr. College*, 498 F. Supp. 555 (S.D. Tex. 1980).
- 4 U.S.—*Johnson v. San Jacinto Jr. College*, 498 F. Supp. 555 (S.D. Tex. 1980).  
As to constitutional right of privacy as protecting only a reasonable expectation of privacy, generally, see § 1167.  
**No constitutionally protected right to privacy in matters exposed to public view**  
N.J.—*Doe v. Poritz*, 142 N.J. 1, 662 A.2d 367, 36 A.L.R.5th 711 (1995).
- 5 U.S.—*Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 95 S. Ct. 1029, 43 L. Ed. 2d 328 (1975).  
Wash.—*State v. Chen*, 178 Wash. 2d 350, 309 P.3d 410 (2013).  
As to the constitutional right of privacy with respect to the interest in avoiding disclosure of personal matters, generally, see §§ 1184 et seq.

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## 16B C.J.S. Constitutional Law § 1166

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### A. In General

##### 2. Nature and Extent of Right

## § 1166. Nature of right of privacy

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1210 to 1218

**The right of privacy is a fundamental personal right safeguarding all citizens against unwarranted intrusions by government officials.**

The constitutional right of privacy is a fundamental<sup>1</sup> personal<sup>2</sup> right on an equal or possibly more elevated pedestal than certain other individual constitutional rights.<sup>3</sup> The constitutional right of privacy guarantees that, in certain personal matters, individuals may conduct their affairs free from interference or regulation by the government,<sup>4</sup> and it safeguards all citizens from unwanted intrusions by government officials.<sup>5</sup>

The right to privacy consists of two interrelated strands which are aspects of the protection which the privacy right affords to individual autonomy and identity.<sup>6</sup> The first strand is the individual interest in avoiding disclosure of personal matters,<sup>7</sup> and the other is the interest of the individual in independence in making certain kinds of important decisions.<sup>8</sup> The right of privacy is, therefore, essentially the right to be left alone<sup>9</sup> provided the individual is not interfering with the rights of other individuals or of the public.<sup>10</sup> It does not, however, create a right to impose a person's lifestyle on others who have an equal right to be left alone.<sup>11</sup>



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Footnotes

- 1 U.S.—*Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 180 L. Ed. 2d 544, 67 A.L.R.6th 755 (2011).  
Ark.—*State v. Brown*, 356 Ark. 460, 156 S.W.3d 722 (2004).  
Mont.—*Montana Shooting Sports Ass'n, Inc. v. State*, 2010 MT 8, 355 Mont. 49, 224 P.3d 1240 (2010).  
Wash.—*Butler v. Kato*, 137 Wash. App. 515, 154 P.3d 259 (Div. 1 2007).  
**Core constitutional protection**  
U.S.—*Dorman v. U.S.*, 435 F.2d 385 (D.C. Cir. 1970).
- 2 Fla.—*Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936 (Fla. 2002).  
Wash.—*State v. Meacham*, 93 Wash. 2d 735, 612 P.2d 795 (1980).  
**Vicarious assertion; death of person**  
(1) Right of privacy may not be asserted vicariously.  
U.S.—*Lee v. Gilstrap*, 661 F.2d 999 (4th Cir. 1981).  
(2) Right to privacy terminates upon death and does not descend to heirs of deceased.  
Mich.—*Swickard v. Wayne County Medical Examiner*, 438 Mich. 536, 475 N.W.2d 304 (1991).
- 3 **Same deference as free speech**  
U.S.—*Merriken v. Cressman*, 364 F. Supp. 913 (E.D. Pa. 1973).
- 4 Fla.—*D.M.T. v. T.M.H.*, 129 So. 3d 320 (Fla. 2013).  
Mont.—*State v. Malkuch*, 2007 MT 60, 336 Mont. 219, 154 P.3d 558 (2007).  
Ohio—*Hart v. Alamo Rent A Car*, 195 Ohio App. 3d 167, 2011-Ohio-4099, 959 N.E.2d 15 (8th Dist. Cuyahoga County 2011).  
Wash.—*City of Pasco v. Shaw*, 127 Wash. App. 417, 110 P.3d 1200 (Div. 3 2005), *aff'd*, 161 Wash. 2d 450, 166 P.3d 1157 (2007).  
**Activity involving fundamental rights**  
U.S.—*Garcia v. U.S.*, 666 F.2d 960 (5th Cir. 1982).  
**Right protected only against infringement by governments**  
Me.—*Holland v. Sebunya*, 2000 ME 160, 759 A.2d 205 (Me. 2000).
- 5 U.S.—*Child v. Beame*, 412 F. Supp. 593, 22 Fed. R. Serv. 2d 802 (S.D. N.Y. 1976).  
As to the constitutional right of privacy with respect to:  
Personal privacy, generally, see §§ 1170 et seq.  
Home and family privacy, generally, see §§ 1178 et seq.
- 6 U.S.—*Dible v. City of Chandler*, 515 F.3d 918 (9th Cir. 2008).  
Cal.—*Conejo Wellness Center, Inc. v. City of Agoura Hills*, 214 Cal. App. 4th 1534, 154 Cal. Rptr. 3d 850 (2d Dist. 2013).  
Haw.—*Naipo v. Border*, 125 Haw. 31, 251 P.3d 594 (2011).  
N.J.—*Soliman v. Kushner Companies, Inc.*, 433 N.J. Super. 153, 77 A.3d 1214 (App. Div. 2013).
- 7 U.S.—*Sorrell v. IMS Health Inc.*, 131 S. Ct. 2653, 180 L. Ed. 2d 544, 67 A.L.R.6th 755 (2011); *Whalen v. Roe*, 429 U.S. 589, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977); *Wurzelbacher v. Jones-Kelley*, 675 F.3d 580 (6th Cir. 2012).  
Cal.—*Conejo Wellness Center, Inc. v. City of Agoura Hills*, 214 Cal. App. 4th 1534, 154 Cal. Rptr. 3d 850 (2d Dist. 2013).  
Fla.—*Favalora v. Sidaway*, 996 So. 2d 895 (Fla. 4th DCA 2008).  
Haw.—*Naipo v. Border*, 125 Haw. 31, 251 P.3d 594 (2011); *Brende v. Hara*, 113 Haw. 424, 153 P.3d 1109 (2007).  
Idaho—*Cowles Pub. Co. v. Kootenai County Bd. of County Com'rs*, 144 Idaho 259, 159 P.3d 896 (2007).  
Mont.—*Montana Shooting Sports Ass'n, Inc. v. State*, 2010 MT 8, 355 Mont. 49, 224 P.3d 1240 (2010).  
As to the constitutional right of privacy with respect to avoidance of the disclosure of personal matters, generally, see §§ 1184 et seq.
- 8 U.S.—*City of Akron v. Akron Center for Reproductive Health, Inc.*, 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687 (1983) (overruled on other grounds by, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)); *Carey v. Population Services, Intern.*,

431 U.S. 678, 97 S. Ct. 2010, 52 L. Ed. 2d 675 (1977); *Whalen v. Roe*, 429 U.S. 589, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977); *Cleveland Bd. of Educ. v. LaFleur*, 414 U.S. 632, 94 S. Ct. 791, 39 L. Ed. 2d 52 (1974); *Eisenstadt v. Baird*, 405 U.S. 438, 92 S. Ct. 1029, 31 L. Ed. 2d 349 (1972); *Aid for Women v. Foulston*, 441 F.3d 1101 (10th Cir. 2006).

Cal.—*Conejo Wellness Center, Inc. v. City of Agoura Hills*, 214 Cal. App. 4th 1534, 154 Cal. Rptr. 3d 850 (2d Dist. 2013).

Haw.—*Naipo v. Border*, 125 Haw. 31, 251 P.3d 594 (2011).

Md.—*Doe v. Maryland Bd. of Social Workers*, 154 Md. App. 520, 840 A.2d 744 (2004), *aff'd*, 384 Md. 161, 862 A.2d 996 (2004).

As to the constitutional right of privacy with respect to the interest of an individual in independence in making certain kinds of important decisions, generally, see §§ 1198 et seq.

**Right to autonomous decision-making**

Wash.—*O'Hartigan v. Department of Personnel*, 118 Wash. 2d 111, 821 P.2d 44 (1991).

Mont.—*Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364 (1999).

Fla.—*D.M.T. v. T.M.H.*, 129 So. 3d 320 (Fla. 2013).

**Free from unreasonable intrusion private affairs**

Wash.—*State v. Jones*, 146 Wash. 2d 328, 45 P.3d 1062 (2002).

Ga.—*In re J.M.*, 276 Ga. 88, 575 S.E.2d 441 (2003).

Minn.—*Dunham v. Roer*, 708 N.W.2d 552 (Minn. Ct. App. 2006).

**Not extended to nude sunbathing at town beach**

U.S.—*Chapin v. Town of Southampton*, 457 F. Supp. 1170 (E.D. N.Y. 1978).

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## 16B C.J.S. Constitutional Law § 1167

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### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### A. In General

##### 2. Nature and Extent of Right

## § 1167. Extent of right of privacy

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1210 to 1218

**The constitutional right of privacy limits its protection to those personal rights that can be deemed fundamental or implicit in the concept of ordered liberty.**

The constitutional right of privacy limits its protection to those personal rights that can be deemed fundamental or implicit in the concept of ordered liberty.<sup>1</sup> The test of whether an activity is a fundamental freedom which is protected under the constitutional right of privacy is whether the activity is essential, not merely desirable, for the exercise of specifically enumerated rights.<sup>2</sup>

In any event, the constitutional right of privacy protects only a reasonable expectation of privacy.<sup>3</sup> Thus, where a reasonable expectation of privacy does not exist, there can be no violation of the constitutional right of privacy.<sup>4</sup> In ascertaining whether individuals have a reasonable expectation of privacy that is constitutionally protected, a court must determine not only whether the individual has an actual or subjective expectation of privacy but also whether that expectation is of a type which society at large is prepared to recognize as being reasonable.<sup>5</sup> Various factors surrounding particular activities may create or inhibit reasonable expectations of privacy as required for a violation of the state constitutional right to privacy.<sup>6</sup> Whether a plaintiff

has a reasonable expectation of privacy in the circumstances has been held to be a question of fact<sup>7</sup> or, under some decisions, a mixed question of law and fact.<sup>8</sup>

In assessing a claim of invasion of privacy under a particular state constitution, it has been held that the courts will seek to determine whether the claimant possesses a legally protected privacy interest under established social norms,<sup>9</sup> whether the claimant possesses a reasonable expectation of privacy under the particular circumstances,<sup>10</sup> whether the invasion of privacy is serious and not trivial,<sup>11</sup> and whether the conduct in question is justified when weighed and balanced against the intrusion on privacy resulting from the conduct.<sup>12</sup>

The scope of the right of privacy extends to protecting against intrusion into or exposure of not only things which might result in actual harm and damage but also to things which might result in shame or humiliation or merely violate a person's pride in keeping his or her private affairs private.<sup>13</sup> The scope of the constitutional right of privacy is generally determined by applying commonly accepted standards of social propriety and includes those aspects of an individual's activities and manner of living that are generally regarded as being of such a personal and private nature as to belong to the individual and to be of no proper concern to others.<sup>14</sup> The constitutional right of privacy does not extend to matters of public knowledge.<sup>15</sup>

#### ***Invasion of privacy by private citizens.***

The constitutional right of privacy generally does not protect individuals from the invasion of their privacy rights by private citizens<sup>16</sup> though pursuant to the privacy provisions of some state constitutions, there is authority to the contrary.<sup>17</sup>

#### ***Tort of invasion of privacy.***

The constitutional right of privacy must not be equated with a common-law right recognized by state tort law.<sup>18</sup>

#### ***Minors.***

The constitutional right of privacy extends to minors,<sup>19</sup> but the government has a broader authority to regulate the conduct of minors than of adults.<sup>20</sup>

As applied to minors, the right to privacy must be considered in the context of society's concern for children<sup>21</sup> and a minor child's right to privacy is not violated when a parent or guardian vicariously consents to a relinquishment of some privacy rights.<sup>22</sup>

A regulation involving minors may be permitted where a significant governmental interest can be demonstrated<sup>23</sup> as opposed to the showing of a compelling governmental interest needed to justify a restriction of the privacy rights of adults,<sup>24</sup> though there is authority to the contrary.<sup>25</sup>

### **CUMULATIVE SUPPLEMENT**

#### **Cases:**

The question of whether an individual has a state constitutional right to privacy is a mixed question of fact and law under the totality of the circumstances. [Mont. Const. art. 2, § 10](#). [Speer v. Department of Corrections, 2020 MT 45, 458 P.3d 1016 \(Mont. 2020\)](#).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446 (1973); *Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) (holding modified on other grounds by, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)).  
Minn.—*Women of State of Minn. by Doe v. Gomez*, 542 N.W.2d 17 (Minn. 1995).
- 2 Haw.—*State v. Kahalewai*, 56 Haw. 481, 541 P.2d 1020 (1975).  
As to the nature and definition of fundamental rights, generally, see § 723.
- 3 U.S.—*Van Zee v. Hanson*, 630 F.3d 1126 (8th Cir. 2011).  
Fla.—*City of Riviera Beach v. State*, 82 So. 3d 198 (Fla. 4th DCA 2012).  
Mass.—*Nelson v. Salem State College*, 446 Mass. 525, 845 N.E.2d 338, 207 Ed. Law Rep. 750, 18 A.L.R.6th 811 (2006).  
Mont.—*Billings Gazette v. City of Billings*, 2013 MT 334, 372 Mont. 409, 313 P.3d 129 (2013).  
Wash.—*American Legion Post #149 v. Washington State Dept. of Health*, 164 Wash. 2d 570, 192 P.3d 306 (2008).  
**Defined**  
A "reasonable expectation of privacy," as required for a violation of the state constitutional right to privacy, is an objective entitlement founded on broadly based and widely accepted community norms.  
Cal.—*Sheehan v. San Francisco 49ers, Ltd.*, 45 Cal. 4th 992, 89 Cal. Rptr. 3d 594, 201 P.3d 472 (2009).
- 4 Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014).  
Fla.—*City of Riviera Beach v. State*, 82 So. 3d 198 (Fla. 4th DCA 2012).  
Wash.—*State v. Chen*, 178 Wash. 2d 350, 309 P.3d 410 (2013).
- 5 La.—*Shane v. Parish of Jefferson*, 150 So. 3d 406 (La. Ct. App. 5th Cir. 2014), writ granted, 157 So. 3d 1137 (La. 2015).  
Mont.—*Malcomson v. Northwest*, 2014 MT 242, 376 Mont. 306, 339 P.3d 1235 (2014).  
N.Y.—*People v. Doty*, 34 Misc. 3d 183, 929 N.Y.S.2d 464 (County Ct. 2011).  
Pa.—*Office of Lieutenant Governor v. Mohn*, 67 A.3d 123 (Pa. Commw. Ct. 2013).
- 6 **Customs, practices, and physical settings**  
Cal.—*Sheehan v. San Francisco 49ers, Ltd.*, 45 Cal. 4th 992, 89 Cal. Rptr. 3d 594, 201 P.3d 472 (2009).  
**Time, place, and status of person**  
Time, place and status of the person asserting the expectation of privacy are factors in determining whether the expectation of privacy is reasonable.  
Mont.—*Billings Gazette v. City of Billings*, 2013 MT 334, 372 Mont. 409, 313 P.3d 129 (2013).
- 7 Mont.—*Billings Gazette v. City of Billings*, 2013 MT 334, 372 Mont. 409, 313 P.3d 129 (2013).
- 8 Cal.—*Willard v. AT & T Communications of Cal., Inc.*, 204 Cal. App. 4th 53, 138 Cal. Rptr. 3d 636 (2d Dist. 2012).
- 9 Cal.—*County of Los Angeles v. Los Angeles County Employee Relations Com.*, 56 Cal. 4th 905, 157 Cal. Rptr. 3d 481, 301 P.3d 1102 (2013); *Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014); *Conejo Wellness Center, Inc. v. City of Agoura Hills*, 214 Cal. App. 4th 1534, 154 Cal. Rptr. 3d 850 (2d Dist. 2013).  
**Protected interest**  
The first step in asserting a state constitutional privacy claim is to identify a specific, legally protected privacy interest.  
Cal.—*In re Luis F.*, 177 Cal. App. 4th 176, 99 Cal. Rptr. 3d 174 (1st Dist. 2009).
- 10 Cal.—*County of Los Angeles v. Los Angeles County Employee Relations Com.*, 56 Cal. 4th 905, 157 Cal. Rptr. 3d 481, 301 P.3d 1102 (2013); *Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170

- Cal. Rptr. 3d 540 (1st Dist. 2014); Conejo Wellness Center, Inc. v. City of Agoura Hills, 214 Cal. App. 4th 1534, 154 Cal. Rptr. 3d 850 (2d Dist. 2013).
- 11 Cal.—County of Los Angeles v. Los Angeles County Employee Relations Com., 56 Cal. 4th 905, 157 Cal. Rptr. 3d 481, 301 P.3d 1102 (2013); Medical Board of California v. Chiarottino, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014); Conejo Wellness Center, Inc. v. City of Agoura Hills, 214 Cal. App. 4th 1534, 154 Cal. Rptr. 3d 850 (2d Dist. 2013).
- 12 Cal.—County of Los Angeles v. Los Angeles County Employee Relations Com., 56 Cal. 4th 905, 157 Cal. Rptr. 3d 481, 301 P.3d 1102 (2013); Medical Board of California v. Chiarottino, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014); In re Insurance Installment Fee Cases, 211 Cal. App. 4th 1395, 150 Cal. Rptr. 3d 618 (4th Dist. 2012).
- As to justification of limitations or restrictions, see §§ 1168, 1169.
- 13 La.—City of Baton Rouge/Parish of East Baton Rouge v. Capital City Press, L.L.C., 4 So. 3d 807 (La. Ct. App. 1st Cir. 2008), writ dismissed, 998 So. 2d 99 (La. 2009) and writ dismissed, 998 So. 2d 100 (La. 2009) and judgment modified on reh'g, 7 So. 3d 21 (La. Ct. App. 1st Cir. 2009), writ denied, 8 So. 3d 582 (La. 2009) and writ denied, 8 So. 3d 583 (La. 2009) and writ denied, 8 So. 3d 584 (La. 2009) and writ denied, 8 So. 3d 585 (La. 2009).
- Utah—Redding v. Brady, 606 P.2d 1193 (Utah 1980).
- Effect of absence of concrete or harmful damage**
- Pa.—Snider v. Shapp, 45 Pa. Commw. 337, 405 A.2d 602 (1979).
- 14 Utah—Redding v. Brady, 606 P.2d 1193 (Utah 1980).
- Comprehensive and guarded right**
- Miss.—PHE, Inc. v. State, 877 So. 2d 1244 (Miss. 2004).
- 15 Del.—Helman v. State, 784 A.2d 1058 (Del. 2001).
- Wash.—State v. Chen, 178 Wash. 2d 350, 309 P.3d 410 (2013).
- Public comments**
- N.J.—Tarus v. Borough of Pine Hill, 189 N.J. 497, 916 A.2d 1036 (2007).
- 16 La.—Guilbeaux v. Guilbeaux, 981 So. 2d 913 (La. Ct. App. 3d Cir. 2008).
- Mont.—Miller v. Great Falls Athletic Club, LLC, 2010 MT 171N, 357 Mont. 562, 242 P.3d 1286 (2010).
- N.J.—Soliman v. Kushner Companies, Inc., 433 N.J. Super. 153, 77 A.3d 1214 (App. Div. 2013).
- 17 Cal.—Willard v. AT & T Communications of Cal., Inc., 204 Cal. App. 4th 53, 138 Cal. Rptr. 3d 636 (2d Dist. 2012).
- 18 U.S.—McNally v. Pulitzer Pub. Co., 532 F.2d 69 (8th Cir. 1976).
- As to the tort of invasion of privacy, generally, see C.J.S., Right of Privacy and Publicity §§ 1 et seq.
- 19 U.S.—Aid for Women v. Foulston, 441 F.3d 1101 (10th Cir. 2006).
- Fla.—B.B. v. State, 659 So. 2d 256 (Fla. 1995).
- Ind.—In re Paternity of K.D., 929 N.E.2d 863 (Ind. Ct. App. 2010).
- 20 U.S.—Wyatt v. Fletcher, 718 F.3d 496, 294 Ed. Law Rep. 396 (5th Cir. 2013).
- 21 Iowa—State v. Spencer, 737 N.W.2d 124 (Iowa 2007).
- 22 U.S.—Wyatt v. Fletcher, 718 F.3d 496, 294 Ed. Law Rep. 396 (5th Cir. 2013).
- Iowa—State v. Spencer, 737 N.W.2d 124 (Iowa 2007).
- 23 U.S.—Aid for Women v. Foulston, 441 F.3d 1101 (10th Cir. 2006).
- Haw.—In re TC, 121 Haw. 92, 214 P.3d 1082 (Ct. App. 2009), as corrected, (June 25, 2009) and as corrected, (June 26, 2009).
- As to narrowly drawn enactments or rules implementing the regulation of the constitutional right of privacy justified by compelling or overriding governmental interest, generally, see § 1169.
- 24 N.H.—Goodrow v. Perrin, 119 N.H. 483, 403 A.2d 864 (1979).
- 25 **Compelling governmental interest required**
- Cal.—American Academy of Pediatrics v. Lungren, 16 Cal. 4th 307, 66 Cal. Rptr. 2d 210, 940 P.2d 797 (1997) (rejected on other grounds by, Planned Parenthood of the Great Northwest v. State, 2012 WL 4835506 (Alaska Super. Ct. 2012)).

## 16B C.J.S. Constitutional Law § 1168

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### A. In General

##### 3. Limitations and Restrictions

## § 1168. Limitations and restrictions on right of privacy, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1210 to 1218

**The constitutional right of privacy is not an absolute or unqualified right and must be considered or balanced against important governmental interests in regulation or competing private and governmental or public interests.**

The constitutional right of privacy is not an absolute<sup>1</sup> or unqualified<sup>2</sup> right. It must, rather, be considered or balanced against important governmental interests<sup>3</sup> in regulation<sup>4</sup> or competing private and governmental or public interests.<sup>5</sup> The right of privacy must, therefore, often give way to competing societal interests.<sup>6</sup> Thus, intrusions on the privacy of the individual may be justified in the public interest.<sup>7</sup>

### CUMULATIVE SUPPLEMENT

#### Cases:

A state intrusion into a person's bank records is not unreasonable under state constitution right of privacy guarantee when the state acts under a valid warrant or subpoena. West's U.C.A. Const. Art. 1, § 14. *Schroeder v. Utah Attorney General's Office*, 2015 UT 77, 358 P.3d 1075 (Utah 2015).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—*Simmons v. Gorton*, 417 U.S. 902, 94 S. Ct. 2596, 41 L. Ed. 2d 208 (1974); *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 203 Ed. Law Rep. 468 (3d Cir. 2005).  
Alaska—*State v. Planned Parenthood of Alaska*, 171 P.3d 577 (Alaska 2007).  
Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014).  
Conn.—*State v. Fausel*, 295 Conn. 785, 993 A.2d 455 (2010).  
Ill.—*People v. Hollins*, 2012 IL 112754, 361 Ill. Dec. 402, 971 N.E.2d 504 (Ill. 2012).  
Ind.—*Hubbard v. State*, 849 N.E.2d 1165 (Ind. Ct. App. 2006).  
Kan.—*Alpha Medical Clinic v. Anderson*, 280 Kan. 903, 128 P.3d 364 (2006).  
La.—*Beckett v. Serpas*, 112 So. 3d 348 (La. Ct. App. 4th Cir. 2013).  
Wash.—*In re Detention of Williams*, 163 Wash. App. 89, 264 P.3d 570 (Div. 2 2011).
- 2 U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) (holding modified on other grounds by, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)).  
Pa.—*Pennsylvania State Educ. Ass'n ex rel. Wilson v. Com., Dept. of Community and Economic Development, Office of Open Records*, 981 A.2d 383, 249 Ed. Law Rep. 324 (Pa. Commw. Ct. 2009), order aff'd, 606 Pa. 638, 2 A.3d 558 (2010).
- 3 Alaska—*State v. Planned Parenthood of Alaska*, 171 P.3d 577 (Alaska 2007).  
Cal.—*Los Angeles Unified School District v. Superior Court*, 228 Cal. App. 4th 222, 175 Cal. Rptr. 3d 90, 306 Ed. Law Rep. 919 (2d Dist. 2014), review denied, (Nov. 12, 2014); *Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014); *Whitney v. Montegut*, 222 Cal. App. 4th 906, 166 Cal. Rptr. 3d 455 (2d Dist. 2014), as modified, (Jan. 21, 2014) and review denied, (Mar. 19, 2014).  
N.J.—*In re State ex rel. Essex County Prosecutor's Office*, 427 N.J. Super. 1, 46 A.3d 616 (Law Div. 2012).  
Pa.—*Pennsylvania Social Services Union, Local 688 of Service Employees Intern. Union v. Com.*, 59 A.3d 1136 (Pa. Commw. Ct. 2012).
- 4 U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) (holding modified on other grounds by, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)); *Moity v. Louisiana State Bar Ass'n*, 414 F. Supp. 180 (E.D. La. 1976), aff'd, 537 F.2d 1141 (5th Cir. 1976).
- 5 U.S.—*Nixon v. Administrator of General Services*, 433 U.S. 425, 97 S. Ct. 2777, 53 L. Ed. 2d 867 (1977).  
Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014); *Whitney v. Montegut*, 222 Cal. App. 4th 906, 166 Cal. Rptr. 3d 455 (2d Dist. 2014), as modified, (Jan. 21, 2014) and review denied, (Mar. 19, 2014).
- 6 U.S.—*Doe v. General Services Admin.*, 544 F. Supp. 530 (D. Md. 1982).  
Conn.—*State v. Fausel*, 295 Conn. 785, 993 A.2d 455 (2010).  
Wash.—*In re Detention of Williams*, 163 Wash. App. 89, 264 P.3d 570 (Div. 2 2011).
- 7 U.S.—*Alma Soc. Inc. v. Mellon*, 459 F. Supp. 912 (S.D. N.Y. 1978), judgment aff'd, 601 F.2d 1225 (2d Cir. 1979).  
As to justified restriction of the constitutional right of privacy, generally, see § 1169.  
**Public necessity**  
Ohio—*State v. Williams*, 88 Ohio St. 3d 513, 2000-Ohio-428, 728 N.E.2d 342 (2000).  
**Matters of public interest**



The right to privacy is not absolute; it is qualified by the rights of others, and it is also limited by society's right to be informed about legitimate subjects of public interest.

La.—[Beckett v. Serpas](#), 112 So. 3d 348 (La. Ct. App. 4th Cir. 2013).

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## 16B C.J.S. Constitutional Law § 1169

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### A. In General

##### 3. Limitations and Restrictions

## § 1169. Justified restriction on right of privacy

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1210 to 1218

**Governmental regulation restricting the constitutional right of privacy may generally be justified only by a compelling or overriding governmental interest, and enactments or rules implementing such regulation must be narrowly drawn to express only the legitimate governmental interests at stake.**

Governmental regulation restricting the constitutional right of privacy may generally be justified only by a compelling or overriding governmental interest,<sup>1</sup> and enactments or rules implementing such regulation must ordinarily be narrowly drawn to express only the legitimate governmental interests at stake.<sup>2</sup> Once justified, the extent of the government's intrusion into an individual's right to privacy is not unlimited, and the means utilized to serve the government's interests must, therefore, ordinarily be necessary and reasonable.<sup>3</sup> Where, however, no fundamental interest is involved,<sup>4</sup> as where the impact on the constitutionally protected right of privacy is indirect and remote,<sup>5</sup> a statute or regulation challenged on the ground that it violates a privacy right must be reviewed under the rational basis test, rather than the strict scrutiny or compelling state interest test,<sup>6</sup> and will be upheld if it is reasonable, not arbitrary,<sup>7</sup> and bears a rational relationship to permissible governmental objectives.<sup>8</sup>

Footnotes

- 1
 

U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973); *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 203 Ed. Law Rep. 468 (3d Cir. 2005).

Alaska—*State v. Planned Parenthood of Alaska*, 171 P.3d 577 (Alaska 2007).

Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014).

Fla.—*State v. Crumbley*, 143 So. 3d 1059 (Fla. 2d DCA 2014), review denied, 157 So. 3d 1042 (Fla. 2014).

Mont.—*Malcomson v. Northwest*, 2014 MT 242, 376 Mont. 306, 339 P.3d 1235 (2014).

Pa.—*Pennsylvania Social Services Union, Local 688 of Service Employees Intern. Union v. Com.*, 59 A.3d 1136 (Pa. Commw. Ct. 2012).

N.J.—*In re State ex rel. Essex County Prosecutor's Office*, 427 N.J. Super. 1, 46 A.3d 616 (Law Div. 2012).

**Right to privacy must yield to compelling governmental interests**

Fla.—*State v. Johnson*, 814 So. 2d 390 (Fla. 2002).

**Test whether right violated**

Alaska—*Lawson v. Lawson*, 108 P.3d 883 (Alaska 2005).

**Ongoing criminal investigation**

Fla.—*State v. Sun*, 82 So. 3d 866 (Fla. 4th DCA 2011).

**Burden of proof on State to justify intrusion on privacy**

Fla.—*North Florida Women's Health and Counseling Services, Inc. v. State*, 866 So. 2d 612 (Fla. 2003).
- 2
 

U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).

Alaska—*State v. Planned Parenthood of Alaska*, 171 P.3d 577 (Alaska 2007).

Mont.—*Malcomson v. Northwest*, 2014 MT 242, 376 Mont. 306, 339 P.3d 1235 (2014).
- 3
 

Cal.—*Hernandez v. Hillsides, Inc.*, 47 Cal. 4th 272, 97 Cal. Rptr. 3d 274, 211 P.3d 1063 (2009).

Fla.—*State v. Tamulonis*, 39 So. 3d 524 (Fla. 2d DCA 2010).

Ill.—*In re M.A.*, 2014 IL App (1st) 132540, 382 Ill. Dec. 526, 12 N.E.3d 805 (App. Ct. 1st Dist. 2014).

N.J.—*In re State ex rel. Essex County Prosecutor's Office*, 427 N.J. Super. 1, 46 A.3d 616 (Law Div. 2012).

Pa.—*In re D.S.*, 2014 PA Super 229, 102 A.3d 486 (2014).

Wash.—*State v. Reeder*, 181 Wash. App. 897, 330 P.3d 786 (Div. 1 2014).

**Strict scrutiny standard of constitutional review applicable**

N.M.—*Cummings v. X-Ray Associates of New Mexico, P.C.*, 1996-NMSC-035, 121 N.M. 821, 918 P.2d 1321 (1996).
- 4
 

U.S.—*Turner v. California*, 444 U.S. 949, 100 S. Ct. 420, 62 L. Ed. 2d 318 (1979).

Alaska—*Fraternal Order of Eagles v. City and Borough of Juneau*, 254 P.3d 348 (Alaska 2011).
- 5
 

U.S.—*Ensminger v. C. I. R.*, 610 F.2d 189 (4th Cir. 1979).
- 6
 

U.S.—*Turner v. California*, 444 U.S. 949, 100 S. Ct. 420, 62 L. Ed. 2d 318 (1979); *Planned Parenthood of Minnesota v. State of Minn.*, 612 F.2d 359 (8th Cir. 1980), judgment aff'd, 448 U.S. 901, 100 S. Ct. 3039, 65 L. Ed. 2d 1131 (1980).

Alaska—*Fraternal Order of Eagles v. City and Borough of Juneau*, 254 P.3d 348 (Alaska 2011).

**Factors reviewed to determine extent of scrutiny appropriate**

N.J.—*Sojourner A. v. New Jersey Dept. of Human Services*, 177 N.J. 318, 828 A.2d 306 (2003).
- 7
 

U.S.—*Alma Soc. Inc. v. Mellon*, 459 F. Supp. 912 (S.D. N.Y. 1978), judgment aff'd, 601 F.2d 1225 (2d Cir. 1979).
- 8
 

U.S.—*Ensminger v. C. I. R.*, 610 F.2d 189 (4th Cir. 1979).

**Close, substantial relationship**

Alaska—*Fraternal Order of Eagles v. City and Borough of Juneau*, 254 P.3d 348 (Alaska 2011); *Sampson v. State*, 31 P.3d 88 (Alaska 2001).

## 16B C.J.S. Constitutional Law V XIV B Refs.

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### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

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## Research References

### A.L.R. Library

- A.L.R. Index, Abortion
- A.L.R. Index, Association, Freedom of
- A.L.R. Index, Children and Minors
- A.L.R. Index, Civil Rights and Discrimination
- A.L.R. Index, Cocaine
- A.L.R. Index, Constitutional Law
- A.L.R. Index, Criminal Law
- A.L.R. Index, Drugs and Narcotics
- A.L.R. Index, Fifth Amendment
- A.L.R. Index, First Amendment
- A.L.R. Index, Fourteenth Amendment
- A.L.R. Index, Marijuana
- A.L.R. Index, Marriage
- A.L.R. Index, Massage and Massage Parlors
- A.L.R. Index, Medical Records
- A.L.R. Index, Ninth Amendment
- A.L.R. Index, Privacy
- A.L.R. Index, Procreation
- A.L.R. Index, Prostitution
- A.L.R. Index, Public Officers and Employees
- A.L.R. Index, Sexual Relations and Offenses
- A.L.R. Index, Sodomy
- A.L.R. Index, State Action

West's A.L.R. Digest, [Constitutional Law](#) 🔑 [1080](#), [1093](#), [1094](#), [1225](#) to [1275](#)

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## 16B C.J.S. Constitutional Law § 1170

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### a. Personal Privacy

##### (1) In General

## § 1170. Body and bodily functions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1080, 1225 to 1275

**Many state constitutions, as well as the Federal Constitution, guarantee a personal right of privacy with respect to a person's own body and bodily functions.**

Many state constitutions,<sup>1</sup> as well as the Federal Constitution,<sup>2</sup> guarantee a personal right of privacy with respect to a person's own body and bodily functions which may be asserted to prevent unwanted infringements of his or her bodily integrity.<sup>3</sup>

The constitutional right to privacy in regard to one's own body includes the right to the protection of confidentiality regarding information about the state of one's health,<sup>4</sup> the court reasoning that information about one's body and state of health are matters which the individual is ordinarily entitled to retain within the private enclave where he may lead a private life.<sup>5</sup>

A person's right to bodily integrity is not, however, absolute.<sup>6</sup> It may, therefore, be enforced only in appropriate circumstances.<sup>7</sup> What set of circumstances are appropriate for the exercise of this privacy right generally depends on the proper balancing of the applicable governmental and individual interests.<sup>8</sup>

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#### Footnotes

- 1 Fla.—[Burton v. State](#), 49 So. 3d 263 (Fla. 1st DCA 2010).  
Miss.—[PHE, Inc. v. State](#), 877 So. 2d 1244 (Miss. 2004).  
Mont.—[Armstrong v. State](#), 1999 MT 261, 296 Mont. 361, 989 P.2d 364 (1999).
- 2 Iowa—Iowa Dept. of Social Services, [Iowa Men's Reformatory v. Iowa Merit Employment Dept.](#), 261 N.W.2d 161 (Iowa 1977).  
N.J.—[Matter of Conroy](#), 98 N.J. 321, 486 A.2d 1209, 48 A.L.R.4th 1 (1985).  
**Right extends to naked body**  
U.S.—[Bowling v. Enomoto](#), 514 F. Supp. 201 (N.D. Cal. 1981).
- 3 Cal.—[Sheehan v. San Francisco 49ers, Ltd.](#), 45 Cal. 4th 992, 89 Cal. Rptr. 3d 594, 201 P.3d 472 (2009).  
Mass.—[Matter of Spring](#), 380 Mass. 629, 405 N.E.2d 115 (1980).  
As to a person's right to privacy with regard to sexual activity, generally, see §§ 1174 et seq.  
**Photographs**  
Tex.—[Ex parte Thompson](#), 442 S.W.3d 325 (Tex. Crim. App. 2014).  
**Right not to have body altered or invaded without consent**  
Minn.—[Jarvis v. Levine](#), 418 N.W.2d 139, 74 A.L.R.4th 1079 (Minn. 1988).
- 4 U.S.—[Matson v. Board of Educ. of City School Dist. of New York](#), 631 F.3d 57, 264 Ed. Law Rep. 541 (2d Cir. 2011).  
As to confidentiality in regard to medical records and information, see §§ 1187, 1188.
- 5 U.S.—[Matson v. Board of Educ. of City School Dist. of New York](#), 631 F.3d 57, 264 Ed. Law Rep. 541 (2d Cir. 2011).
- 6 Mass.—[Commissioner of Correction v. Myers](#), 379 Mass. 255, 399 N.E.2d 452 (1979).  
As to the constitutional right of privacy protecting an individual against unwanted infringements of bodily integrity in connection with health decisions, generally, see § 1199.  
As to the qualified nature of the constitutional right of privacy, generally, see § 1168.
- 7 Mass.—[Commissioner of Correction v. Myers](#), 379 Mass. 255, 399 N.E.2d 452 (1979).  
**No right to physician's assistance in committing suicide**  
Alaska—[Sampson v. State](#), 31 P.3d 88 (Alaska 2001).
- 8 Mass.—[Commissioner of Correction v. Myers](#), 379 Mass. 255, 399 N.E.2d 452 (1979).

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## 16B C.J.S. Constitutional Law § 1171

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### a. Personal Privacy

##### (1) In General

## § 1171. Possession, delivery, or use of illegal drugs

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1225 to 1275

### A.L.R. Library

[Constitutionality of state legislation imposing criminal penalties for personal possession or use of marijuana, 96 A.L.R.3d 225](#)

**Private possession of contraband drugs is generally not protected by the right of privacy, and the right of privacy does not embrace the right to possess dangerous drugs.**



Private possession of contraband<sup>1</sup> or dangerous<sup>2</sup> drugs is generally not protected by the right of privacy. In more particular terms, the constitutional right of privacy does not guarantee a reasonable personal use of cocaine,<sup>3</sup> and the inclusion of cocaine within a statutorily prohibited class does not invade an individual's right of privacy.<sup>4</sup> The right of privacy also does not extend to the possession or delivery of marijuana<sup>5</sup> or to the possession and use of marijuana.<sup>6</sup> Statutes prohibiting the importation and distribution,<sup>7</sup> or the possession,<sup>8</sup> of marijuana, or the sale or use of marijuana and its derivatives<sup>9</sup> do not deny rights to privacy. Furthermore, there is no fundamental right to smoke marijuana,<sup>10</sup> and more specifically, the right to smoke marijuana is not fundamental to the American scheme of justice<sup>11</sup> and is not within the zone of privacy<sup>12</sup> formed by the penumbras of the First,<sup>13</sup> Third,<sup>14</sup> Fourth,<sup>15</sup> Fifth,<sup>16</sup> and Ninth<sup>17</sup> Amendments to the Constitution.<sup>18</sup>

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#### Footnotes

- 1 U.S.—*Leary v. U.S.*, 544 F.2d 1266 (5th Cir. 1977).  
As to the constitutional right of privacy with respect to the possession or use of illegal drugs in the privacy of a person's own home, generally, see § 1179.
- 2 Ga.—*Blincoe v. State*, 231 Ga. 886, 204 S.E.2d 597 (1974).
- 3 Mich.—*People v. Stout*, 116 Mich. App. 726, 323 N.W.2d 532 (1982).  
As to the constitutional right of privacy with respect to the use or possession of cocaine in a person's home, generally, see § 1179.
- 4 Fla.—*Shapiro v. State*, 390 So. 2d 344 (Fla. 1980).
- 5 Wash.—*State v. Marcum*, 24 Wash. App. 441, 601 P.2d 975 (Div. 3 1979).
- 6 Alaska—*Ravin v. State*, 537 P.2d 494 (Alaska 1975).  
Haw.—*State v. Mallan*, 86 Haw. 440, 950 P.2d 178 (1998).  
As to the constitutional right of privacy with respect to the possession or use of marijuana in the privacy of a person's own home, generally, see § 1179.
- 7 U.S.—*U.S. v. Bergdoll*, 412 F. Supp. 1308 (D. Del. 1976).
- 8 Alaska—*Frazier v. State*, 566 P.2d 1023 (Alaska 1977).  
Ill.—*People v. Brisco*, 78 Ill. App. 3d 282, 33 Ill. Dec. 827, 397 N.E.2d 160 (1st Dist. 1979).  
**Privacy values not fundamental**  
Haw.—*State v. Renfro*, 56 Haw. 501, 542 P.2d 366 (1975).
- 9 U.S.—*U.S. v. Horsley*, 519 F.2d 1264 (5th Cir. 1975).
- 10 U.S.—*National Organization for Reform of Marijuana Laws (NORML) v. Bell*, 488 F. Supp. 123 (D.D.C. 1980).  
Fla.—*Laird v. State*, 342 So. 2d 962 (Fla. 1977).  
As to the constitutional right of privacy with respect to the right to smoke marijuana in the privacy of a person's own home, generally, see § 1179.
- 11 Wash.—*State v. Anderson*, 16 Wash. App. 553, 558 P.2d 307 (Div. 2 1976), judgment aff'd, 93 Wash. 2d 329, 610 P.2d 869 (1980).
- 12 Mass.—*Com. v. Leis*, 355 Mass. 189, 243 N.E.2d 898 (1969).  
Wash.—*State v. Anderson*, 16 Wash. App. 553, 558 P.2d 307 (Div. 2 1976), judgment aff'd, 93 Wash. 2d 329, 610 P.2d 869 (1980).
- 13 U.S. Const. Amend. I.
- 14 U.S. Const. Amend. III.
- 15 U.S. Const. Amend. IV.
- 16 U.S. Const. Amend. V.
- 17 U.S. Const. Amend. IX.
- 18 Mass.—*Com. v. Leis*, 355 Mass. 189, 243 N.E.2d 898 (1969).

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## 16B C.J.S. Constitutional Law § 1172

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### a. Personal Privacy

##### (1) In General

## § 1172. Mental processes; personality; identity

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1080, 1225 to 1275

**The constitutional right of privacy is broad enough to protect a person's mental processes from governmental interference and includes privacy of the mind.**

The constitutional right of privacy is broad enough to protect a person's mental processes from governmental interference<sup>1</sup> and includes privacy of the mind.<sup>2</sup> Thus, an individual has a right to be free from unwarranted governmental intrusion into matters so fundamentally affecting him or her as the person's personality, self-image, and indeed, his or her very identity.<sup>3</sup> Legislation which diminishes the right of privacy with respect to thought processes can only be sustained where necessary to further a compelling governmental interest,<sup>4</sup> and the least drastic means has been employed to further that interest.<sup>5</sup>

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Footnotes

- 1 U.S.—[Rennie v. Klein](#), 462 F. Supp. 1131 (D.N.J. 1978).
- 2 Cal.—[Aden v. Younger](#), 57 Cal. App. 3d 662, 129 Cal. Rptr. 535 (4th Dist. 1976).  
**Psychiatric examination**  
 Absent compelling state interest, right of privacy under state constitution precluded trial court from ordering father to undergo a psychiatric examination independency proceedings to further goal of family reunification.  
 Pa.—[In re D.S.](#), 2014 PA Super 229, 102 A.3d 486 (2014).  
**Conditions under which disclosure of thoughts and feelings occur**  
 U.S.—[Hawaii Psychiatric Soc., Dist. Branch of American Psychiatric Ass'n v. Ariyoshi](#), 481 F. Supp. 1028 (D. Haw. 1979).  
**Propriety of mandated psychological counseling**  
 U.S.—[U.S. v. Stine](#), 675 F.2d 69 (3d Cir. 1982).  
 3 **Control of mind and thoughts**  
 La.—[State v. Perry](#), 610 So. 2d 746 (La. 1992).  
**Protection of individuality**  
 Alaska—[City and Borough of Juneau v. Quinto](#), 684 P.2d 127 (Alaska 1984).  
**Among rights protected**  
 Autonomous control over development and expression of a person's intellect, interest, tastes, and personality are among most precious of rights protected by First Amendment.  
 U.S.—[benShalom v. Secretary of Army](#), 489 F. Supp. 964 (E.D. Wis. 1980).  
 4 Cal.—[Aden v. Younger](#), 57 Cal. App. 3d 662, 129 Cal. Rptr. 535 (4th Dist. 1976).  
 As to the need for a compelling or overriding governmental interest justifying restriction of the constitutional right of privacy, generally, see § 1169.  
 5 Cal.—[Aden v. Younger](#), 57 Cal. App. 3d 662, 129 Cal. Rptr. 535 (4th Dist. 1976).  
 As to the requirement that the least drastic means be employed to further a compelling governmental interest where a right to privacy is impinged upon by the State, generally, see § 1169.

## 16B C.J.S. Constitutional Law § 1173

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### a. Personal Privacy

##### (1) In General

## § 1173. Obscene materials or devices

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1225 et seq., 1242

### A.L.R. Library

[Constitutionality of State Statutes Banning Distribution of Sexual Devices](#), 94 A.L.R.5th 497

**The right to view and distribute obscene materials or possess obscene devices may be properly proscribed.**

The right of privacy does not include any fundamental right to watch obscene movies in places of public accommodation.<sup>1</sup> Additionally, commerce in obscene material is unprotected by any constitutional doctrine of privacy<sup>2</sup> and a statute proscribing

the distribution of obscene material does not violate a constitutional right of privacy.<sup>3</sup> Similarly, a statute prohibiting possession of obscene material or devices<sup>4</sup> or making it a crime to promote obscene material or devices<sup>5</sup> does not unconstitutionally infringe on the right to privacy.

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Footnotes

- 1 U.S.—*Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446 (1973).
- 2 Tex.—*Ex parte Dave*, 220 S.W.3d 154 (Tex. App. Fort Worth 2007), petition for discretionary review refused, (June 20, 2007).
- 3 Ga.—*Morrison v. State*, 272 Ga. 129, 526 S.E.2d 336 (2000).
- 4 Ga.—*Kametches v. State*, 242 Ga. 721, 251 S.E.2d 232 (1978).  
Tex.—*Ex parte Dave*, 220 S.W.3d 154 (Tex. App. Fort Worth 2007), petition for discretionary review refused, (June 20, 2007).
- 5 Fla.—*A.H. v. State*, 949 So. 2d 234 (Fla. 1st DCA 2007).  
La.—*State v. Brennan*, 772 So. 2d 64 (La. 2000).  
Tex.—*Ex parte Dave*, 220 S.W.3d 154 (Tex. App. Fort Worth 2007), petition for discretionary review refused, (June 20, 2007).  
**Sale of or access to sexual devices not protected**  
Miss.—*PHE, Inc. v. State*, 877 So. 2d 1244 (Miss. 2004).

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## 16B C.J.S. Constitutional Law § 1174

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### a. Personal Privacy

##### (2) Sexual Matters

## § 1174. Right of privacy applicable to sexual activities, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1094, 1237 to 1246.

**An individual's private sexual activities are generally within the zone of privacy protected from unwarranted government intrusion, and the constitutional right of privacy exists within the context of intimate sexual relations between consenting adults in private.**

An individual's private sexual activities are generally within the zone of privacy protected from unwarranted government intrusion,<sup>1</sup> and the constitutional right of privacy exists within the context of intimate sexual relations between consenting adults in private.<sup>2</sup>

The condition of marriage is not a prerequisite to the operation of such right of privacy.<sup>3</sup> Thus, the right to personal sexual conduct is broad enough to include sexual acts between nonmarried persons,<sup>4</sup> including private, consensual sexual intimacy between same-sex adults.<sup>5</sup>

The right of privacy with respect to private sexual activities is not absolute.<sup>6</sup> Thus, it does not extend to all sexual practices performed by consenting adults in nonpublic places<sup>7</sup> and does not encompass an unlimited right to do with a person's body as he or she pleases,<sup>8</sup> including engaging in the intimacies of sexual relationships outside of the marriage,<sup>9</sup> nor a right to enjoy all the varieties of sexual freedom.<sup>10</sup>

**Commercial sexual businesses.** Generally, privacy rights do not extend to commercial sexually oriented ventures,<sup>11</sup> and such businesses are not regarded as private places protected by a constitutional right of privacy.<sup>12</sup>

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#### Footnotes

- 1 U.S.—*Wilson v. Collins*, 517 F.3d 421 (6th Cir. 2008).  
Ark.—*Arkansas Dept. of Human Services v. Cole*, 2011 Ark. 145, 380 S.W.3d 429 (2011).  
Cal.—*Tien v. Superior Court*, 139 Cal. App. 4th 528, 43 Cal. Rptr. 3d 121 (2d Dist. 2006).  
N.J.—*Lewis v. Harris*, 378 N.J. Super. 168, 875 A.2d 259 (App. Div. 2005), judgment aff'd as modified on other grounds, 188 N.J. 415, 908 A.2d 196 (2006).  
As to the right of an individual to avoid the disclosure of details of his or her sex life, generally, see §§ 1174 et seq.  
As to the independence in making decisions about sex, generally, see § 1198.
- 2 U.S.—*Lovisi v. Slayton*, 363 F. Supp. 620 (E.D. Va. 1973), judgment aff'd, 539 F.2d 349 (4th Cir. 1976).  
Ariz.—*State v. Bateman*, 113 Ariz. 107, 547 P.2d 6 (1976).  
Wash.—*State v. Clinkenbeard*, 130 Wash. App. 552, 123 P.3d 872, 203 Ed. Law Rep. 850 (Div. 3 2005).
- 3 U.S.—*Lovisi v. Slayton*, 363 F. Supp. 620 (E.D. Va. 1973), judgment aff'd, 539 F.2d 349 (4th Cir. 1976).  
Cal.—*In re Marriage of Wellman*, 104 Cal. App. 3d 992, 164 Cal. Rptr. 148 (1st Dist. 1980).  
**Extramarital affair**  
Cal.—*Winfred D. v. Michelin North America, Inc.*, 165 Cal. App. 4th 1011, 81 Cal. Rptr. 3d 756 (2d Dist. 2008), as modified on denial of reh'g, (Aug. 27, 2008).
- 4 Ark.—*Arkansas Dept. of Human Services v. Cole*, 2011 Ark. 145, 380 S.W.3d 429 (2011).  
N.Y.—*People v. Onofre*, 51 N.Y.2d 476, 434 N.Y.S.2d 947, 415 N.E.2d 936, 20 A.L.R.4th 987 (1980).
- 5 § 1176.
- 6 U.S.—*Shuman v. City of Philadelphia*, 470 F. Supp. 449 (E.D. Pa. 1979).  
As to the qualified nature of the constitutional right of privacy, generally, see § 1168.  
**Right of privacy does not protect all sexual conduct from prosecution**  
Ga.—*In re C.P.*, 274 Ga. 599, 555 S.E.2d 426 (2001).
- 7 U.S.—*J.B.K., Inc. v. Caron*, 600 F.2d 710 (8th Cir. 1979).  
Pa.—*McCusker v. W.C.A.B. (Rushton Min. Co.)*, 145 Pa. Commw. 261, 603 A.2d 238 (1992), order aff'd, 536 Pa. 380, 639 A.2d 776 (1994).
- 8 U.S.—*Johnson v. San Jacinto Jr. College*, 498 F. Supp. 555 (S.D. Tex. 1980).
- 9 U.S.—*Johnson v. San Jacinto Jr. College*, 498 F. Supp. 555 (S.D. Tex. 1980).
- 10 U.S.—*McKenna v. Fargo*, 451 F. Supp. 1355 (D.N.J. 1978), aff'd, 601 F.2d 575 (3d Cir. 1979).
- 11 U.S.—*Stratton v. Drumm*, 445 F. Supp. 1305 (D. Conn. 1978).  
Alaska—*Hilbers v. Municipality of Anchorage*, 611 P.2d 31 (Alaska 1980).
- 12 **Massage parlors**  
Ariz.—*State v. B Bar Enterprises, Inc.*, 133 Ariz. 99, 649 P.2d 978 (1982).  
Iowa—*MRM, Inc. v. City of Davenport*, 290 N.W.2d 338 (Iowa 1980).  
Wis.—*City of Madison v. Schultz*, 98 Wis. 2d 188, 295 N.W.2d 798 (Ct. App. 1980).



## 16B C.J.S. Constitutional Law § 1175

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### a. Personal Privacy

##### (2) Sexual Matters

## § 1175. Sexual activities involving minors

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1226, 1237, 1238

**A person generally has no privacy right to engage in sexual intercourse with a person whom the legislature has determined is unable to give consent.**

An adult has no privacy right to engage in sexual intercourse with a person whom the legislature has determined is unable to give consent.<sup>1</sup> Statutes providing that consent is not a defense to a prosecution for sexual activity with a minor do not violate the constitutional right to privacy.<sup>2</sup>

A minor high school student had no constitutionally protected privacy right that barred public secondary school officials from discussing the student's sexual activity or sexual orientation with parent.<sup>3</sup>

The State's interest in protecting children from sexual exploitation and abuse is a compelling government objective that justifies some regulation of sexual conduct even where it infringes on the right to privacy.<sup>4</sup> The State had a compelling interest in protecting minors, and the minor had no reasonable expectation of privacy in photographs of herself and her 17-year-old boyfriend naked and engaged in sexual behavior, which they placed on their home computer and then, using the internet, transferred them by email to another computer outside the home.<sup>5</sup>

The compelling social interests in disclosure of information relating to sexual predators of children outweigh any privacy interests of the offender.<sup>6</sup>

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#### Footnotes

- 1 N.H.—[Goodrow v. Perrin](#), 119 N.H. 483, 403 A.2d 864 (1979).  
As to the right to privacy and the government's broader authority to regulate the conduct of minors, generally, see § 1167.
- 2 Fla.—[Casado v. State](#), 648 So. 2d 714 (Fla. 1995).
- 3 U.S.—[Wyatt v. Fletcher](#), 718 F.3d 496, 294 Ed. Law Rep. 396 (5th Cir. 2013).
- 4 Fla.—[A.H. v. State](#), 949 So. 2d 234 (Fla. 1st DCA 2007).  
Haw.—[In re TC](#), 121 Haw. 92, 214 P.3d 1082 (Ct. App. 2009), as corrected, (June 25, 2009) and as corrected, (June 26, 2009).  
Wash.—[State v. Clinkenbeard](#), 130 Wash. App. 552, 123 P.3d 872, 203 Ed. Law Rep. 850 (Div. 3 2005).
- 5 Fla.—[A.H. v. State](#), 949 So. 2d 234 (Fla. 1st DCA 2007).  
As to privacy of internet data, see § 1185.
- 6 Cal.—[In re Clergy Cases I](#), 188 Cal. App. 4th 1224, 116 Cal. Rptr. 3d 360 (2d Dist. 2010).  
As to privacy and state interest in enforcing criminal laws, see §§ 1193 to 1197.

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## 16B C.J.S. Constitutional Law § 1176

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### a. Personal Privacy

##### (2) Sexual Matters

## § 1176. Sexual orientation

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1094, 1237, 1238, 1241, 1251

**The right of privacy is applicable to the issue of private, consensual sexual intimacy between same-sex adults.**

An individual's constitutionally protected right to privacy extends to private, consensual sexual intimacy between same-sex adults.<sup>1</sup>

In some jurisdictions, statutes proscribing the offense of sodomy between unmarried consenting adults have been held not to implicate the constitutional right of privacy.<sup>2</sup> However, marital intimacies shared by spouses when alone and in their own bedroom are outside the scope of sodomy statutes.<sup>3</sup>

Sodomitic activity carried on in a place which cannot reasonably be considered private is generally not protected by the constitutional right to privacy.<sup>4</sup>

***Transgender identity information.***

The absence of any procedure allowing licensees to change the sex designation on their driver's license impermissibly interfered with transgendered person's right to privacy; Department of Motor Vehicles' absence of any procedure for changing the sex designation on an individual's license indirectly threatened the disclosure of this sensitive personal information.<sup>5</sup>

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Footnotes

- 1 U.S.—[U.S. v. Windsor](#), 133 S. Ct. 2675, 186 L. Ed. 2d 808 (2013); [Lawrence v. Texas](#), 539 U.S. 558, 123 S. Ct. 2472, 156 L. Ed. 2d 508 (2003).  
N.J.—[Lewis v. Harris](#), 378 N.J. Super. 168, 875 A.2d 259 (App. Div. 2005), judgment aff'd as modified on other grounds, 188 N.J. 415, 908 A.2d 196 (2006).  
As to constitutional privacy right affecting right of same sex couples to marry, see [C.J.S., Marriage § 7](#).
- 2 La.—[State v. Smith](#), 766 So. 2d 501 (La. 2000).  
Neb.—[State v. Temple](#), 192 Neb. 442, 222 N.W.2d 356 (1974).  
R.I.—[State v. Chiaradio](#), 660 A.2d 276 (R.I. 1995).  
**Forcible conduct**  
The constitutional right of privacy is not implicated by such statutes where the conduct in issue is not consensual but, rather, involves the use of force.  
Mich.—[People v. Penn](#), 70 Mich. App. 638, 247 N.W.2d 575 (1976).
- 3 U.S.—[Lovisi v. Slayton](#), 539 F.2d 349 (4th Cir. 1976).  
As to the constitutional right of privacy with respect to home and family, generally, see [§§ 1178 et seq.](#)
- 4 D.C.—[U.S. v. McKean](#), 338 A.2d 439 (D.C. 1975).
- 5 Alaska—[K.L. v. State, Dept. of Admin., Div. of Motor Vehicles](#), 2012 WL 2685183 (Alaska Super. Ct. 2012).

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## 16B C.J.S. Constitutional Law § 1177

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### a. Personal Privacy

##### (2) Sexual Matters

## § 1177. Solicitation and prostitution

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1237, 1238, 1246

### A.L.R. Library

[Validity and construction of statute or ordinance proscribing solicitation for purposes of prostitution, lewdness, or assignation—modern cases, 77 A.L.R.3d 519](#)

**There is generally no fundamental right to privacy in commercial sexual solicitation, and statutes or ordinances prohibiting solicitation to engage in prostitution do not violate a constitutional right to privacy.**

There is generally no fundamental right to privacy in commercial sexual solicitation,<sup>1</sup> and statutes or ordinances prohibiting or proscribing prostitution or related offenses generally do not violate a constitutional right of privacy,<sup>2</sup> or impinge upon a fundamental right to privacy,<sup>3</sup> or otherwise unduly restrict the rights of individuals to privacy<sup>4</sup> in sexual matters. Thus, the constitutional right of privacy does not extend to encompass prostitutes plying their trade on the street,<sup>5</sup> especially where the accused does not contend that his or her activity is conducted privately.<sup>6</sup> The constitutional right to privacy protecting certain intimate conduct also does not extend to advertised commercial solicitation performed inside a private residence.<sup>7</sup>

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#### Footnotes

- 1 D.C.—*Lutz v. U. S.*, 434 A.2d 442 (D.C. 1981).  
 Ariz.—*State v. Freitag*, 212 Ariz. 269, 130 P.3d 544 (Ct. App. Div. 1 2006), as corrected, (May 2, 2006).
- 2 Ariz.—*State v. Freitag*, 212 Ariz. 269, 130 P.3d 544 (Ct. App. Div. 1 2006), as corrected, (May 2, 2006).  
 Haw.—*State v. Romano*, 114 Haw. 1, 155 P.3d 1102 (2007), as amended, (Mar. 30, 2007).  
 N.Y.—*In re Dora P.*, 68 A.D.2d 719, 418 N.Y.S.2d 597 (1st Dep't 1979).  
 Pa.—*Com. v. Dodge*, 287 Pa. Super. 148, 429 A.2d 1143 (1981).
- 3 Conn.—*State v. Allen*, 37 Conn. Supp. 506, 424 A.2d 651 (Super. Ct. Appellate Sess. 1980).
- 4 U.S.—*U.S. v. Caesar*, 368 F. Supp. 328 (E.D. Wis. 1973), *aff'd*, 519 F.2d 1405 (7th Cir. 1975).  
 As to the right of individuals to privacy with respect to sexual activity, generally, see §§ 1174 *et seq.*
- 5 *State v. Butkus*, 37 Conn. Supp. 515, 424 A.2d 659 (Super. Ct. Appellate Sess. 1980).
- 6 Iowa—*State v. Henderson*, 269 N.W.2d 404 (Iowa 1978).  
**Commercial sex in public establishment**  
 Alaska—*Summers v. Anchorage*, 589 P.2d 863 (Alaska 1979).
- 7 D.C.—*Blyther v. U.S.*, 577 A.2d 1154 (D.C. 1990).  
 As to the right of privacy in an individual's home, generally, see §§ 1178 *et seq.*

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## 16B C.J.S. Constitutional Law § 1178

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### b. Home and Family Privacy

## § 1178. Home and family privacy, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1093, 1225 to 1275

### The home and the family are generally two protected zones of privacy.

The home and the family are generally two protected zones of privacy.<sup>1</sup> The federal and state constitutions protect the integrity and inviolability of the family unit.<sup>2</sup> Thus, there is a private realm of family life which the government cannot enter,<sup>3</sup> and in some jurisdictions, privacy in the home is deemed a basic or fundamental right.<sup>4</sup> The right of privacy in the home must, however, yield when it interferes, in a serious manner, with the health, safety, right, and privileges of others or with the public welfare.<sup>5</sup> The privacy of an individual's home cannot, though, be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest.<sup>6</sup>

The right of privacy in one's home protects individuals against unwanted communications by outsiders into the home<sup>7</sup> but only where a reasonable expectation of privacy exists.<sup>8</sup>

The right of privacy evolving from an individual's interest in family integrity is also fundamental<sup>9</sup> but, like the right to privacy in one's home, is not absolute.<sup>10</sup> Hence, there is no right of family privacy where there is no expectation of family privacy.<sup>11</sup> The constitutionally protected right of familial privacy is, however, implicated only when the governmental action represents a direct and substantial intrusion into the family relationship.<sup>12</sup> A state may only interfere with the fundamental right to family integrity in order to achieve a compelling governmental objective using the most narrowly tailored means available.<sup>13</sup>

The government is not constitutionally obliged to affirmatively assure a given type of family life, and an obligation in such regard may not be created by inference and misdirection through the penumbral constitutional right to familial privacy.<sup>14</sup>

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#### Footnotes

- 1 U.S.—*McKenna v. Peekskill Housing Authority*, 497 F. Supp. 1217 (S.D. N.Y. 1980), decision aff'd in part, rev'd in part on other grounds, 647 F.2d 332 (2d Cir. 1981).  
Cal.—*County of Los Angeles v. Los Angeles County Employee Relations Com.*, 56 Cal. 4th 905, 157 Cal. Rptr. 3d 481, 301 P.3d 1102 (2013).  
Fla.—*Tallahassee Memorial Regional Medical Center, Inc. v. Petersen*, 920 So. 2d 75 (Fla. 1st DCA 2006).  
As to personal decisions relating to family relationships as among decisions an individual may make without unjustified governmental interference, generally, see § 1198.
- 2 N.J.—*New Jersey Div. of Youth and Family Services v. L.J.D.*, 428 N.J. Super. 451, 54 A.3d 293 (App. Div. 2012).
- 3 Mass.—*Custody of Minor*, 377 Mass. 876, 389 N.E.2d 68 (1979).  
**Protection of family unit constitutionally guaranteed**  
N.C.—*Adams v. Tessener*, 354 N.C. 57, 550 S.E.2d 499 (2001).  
**Protection of integrity of family**  
Neb.—*In re Interest of Clifford M.*, 261 Neb. 862, 626 N.W.2d 549 (2001).  
**Freedom of children and parents to relate to one another in context of family protected**  
Vt.—*In re Inquest Proceedings*, 165 Vt. 549, 676 A.2d 790, 62 A.L.R.5th 909 (1996).
- 4 U.S.—*Hanson v. Dane County, Wis.*, 608 F.3d 335 (7th Cir. 2010).  
Alaska—*Anderson v. State*, 562 P.2d 351 (Alaska 1977).  
**Essential and basic right**  
A family's right to remain together without the coercive interference of the awesome power of the State is the most essential and basic aspect of familial privacy.  
U.S.—*Hernandez ex rel. Hernandez v. Foster*, 657 F.3d 463 (7th Cir. 2011).  
**Legitimate expectation of highest degree of privacy known to our society**  
Pa.—*Com. v. Alexander*, 551 Pa. 1, 708 A.2d 1251 (1998).
- 5 **Adverse effect on others**  
No one has absolute right to do things in privacy of his or her own home which will affect himself or herself or others adversely.  
Alaska—*Ravin v. State*, 537 P.2d 494 (Alaska 1975).
- 6 Alaska—*Ravin v. State*, 537 P.2d 494 (Alaska 1975).
- 7 Wash.—*Trummel v. Mitchell*, 156 Wash. 2d 653, 131 P.3d 305 (2006).
- 8 **Home based business**  
Constitutional protections of a reasonable expectation of privacy in the home do not extend to an individual's place of business.  
Fla.—*Avrich v. State*, 936 So. 2d 739 (Fla. 3d DCA 2006).
- 9 U.S.—*Hanson v. Dane County, Wis.*, 608 F.3d 335 (7th Cir. 2010).  
Ala.—*J.B. v. DeKalb County Dept. of Human Resources*, 12 So. 3d 100 (Ala. Civ. App. 2008).  
Ohio—*Hageman v. Southwest Gen. Health Ctr.*, 119 Ohio St. 3d 185, 2008-Ohio-3343, 893 N.E.2d 153 (2008).
- 10 Mass.—*Custody of Minor*, 377 Mass. 876, 389 N.E.2d 68 (1979).



As to the qualified nature of the constitutional right of privacy, generally, see § 1168.

As to the compelling or overriding governmental interest justifying a restriction of the constitutional right of privacy, generally, see § 1169.

**Necessity of compelling public interest**

Cal.—*City of Santa Barbara v. Adamson*, 27 Cal. 3d 123, 164 Cal. Rptr. 539, 610 P.2d 436, 12 A.L.R.4th 219 (1980).

11 Ga.—*Drummond v. Fulton County Dept. of Family and Children Services*, 237 Ga. 449, 228 S.E.2d 839 (1976).

As to the constitutional right of privacy as protecting only a reasonable expectation of privacy, generally, see § 1167.

**Restriction on private club**

Ordinance prohibiting smoking in private clubs offering food or alcoholic beverages for sale did not implicate the fundamental right to privacy in the home under the state constitution; club was not a private residence but a facility owned by a nonprofit corporation organized under the laws of Alaska.

Alaska—*Fraternal Order of Eagles v. City and Borough of Juneau*, 254 P.3d 348 (Alaska 2011).

12 Ark.—*Arkansas Dept. of Human Services v. Cole*, 2011 Ark. 145, 380 S.W.3d 429 (2011).

Iowa—*State v. Willard*, 756 N.W.2d 207 (Iowa 2008).

**Compelling interest required before encroachment on privacy of family life**

Vt.—*Glidden v. Conley*, 175 Vt. 111, 2003 VT 12, 820 A.2d 197 (2003).

13 Ala.—*J.B. v. DeKalb County Dept. of Human Resources*, 12 So. 3d 100 (Ala. Civ. App. 2008).

Ark.—*Arkansas Dept. of Human Services v. Cole*, 2011 Ark. 145, 380 S.W.3d 429 (2011).

14 U.S.—*Black v. Beame*, 419 F. Supp. 599 (S.D. N.Y. 1976), decision aff'd, 550 F.2d 815 (2d Cir. 1977).

## 16B C.J.S. Constitutional Law § 1179

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### b. Home and Family Privacy

## § 1179. Possession or use of illegal drugs

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1225 to 1273

**The right to possess or use marijuana in a person's home is not a fundamental right protected by a constitutional zone of privacy.**

The right to possess<sup>1</sup> or use<sup>2</sup> marijuana in a person's home is generally not a fundamental right protected by a constitutional zone of privacy, and the right of privacy does not guarantee adults the privilege of smoking marijuana in the privacy of their homes.<sup>3</sup> Accordingly, statutes prohibiting or proscribing the possession or use of marijuana by an individual in the privacy of his or her home do not violate the constitutional right to privacy.<sup>4</sup> Even where the state constitution has recognized a privacy right which protects the right of an adult to possess a small amount of marijuana in his home for personal use,<sup>5</sup> the legislature nevertheless has the power to set reasonable limits on the amount of marijuana that people can possess for personal use in their homes<sup>6</sup> and a statute criminalizing the personal, home possession of a greater amount of marijuana does not conflict with constitution.<sup>7</sup>

The constitutional right to privacy similarly does not encompass the right to use cocaine in the home.<sup>8</sup> The criminalization of the personal use and possession of cocaine in the home is not, therefore, an invalid infringement on the right to privacy.<sup>9</sup>

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Footnotes

- 1 La.—[State v. Chrisman](#), 364 So. 2d 906 (La. 1978).  
Wash.—[State v. Smith](#), 93 Wash. 2d 329, 610 P.2d 869 (1980).  
As to the constitutional right of privacy with respect to the possession, delivery, or use of illegal drugs, generally, see § 1179.
- 2 Ill.—[Illinois NORML, Inc. v. Scott](#), 66 Ill. App. 3d 633, 23 Ill. Dec. 303, 383 N.E.2d 1330 (1st Dist. 1978).  
Wash.—[State v. Smith](#), 93 Wash. 2d 329, 610 P.2d 869 (1980).
- 3 Cal.—[National Organization for Reform of Marijuana Laws v. Gain](#), 100 Cal. App. 3d 586, 161 Cal. Rptr. 181 (1st Dist. 1979).  
As to the constitutional right of privacy with respect to the right to smoke marijuana, generally, see § 1179.
- 4 U.S.—[National Organization for Reform of Marijuana Laws \(NORML\) v. Bell](#), 488 F. Supp. 123 (D.D.C. 1980).  
Haw.—[State v. Mallan](#), 86 Haw. 440, 950 P.2d 178 (1998).
- 5 [Garhart v. State](#), 147 P.3d 746 (Alaska Ct. App. 2006); [Hotrum v. State](#), 130 P.3d 965 (Alaska Ct. App. 2006).
- 6 [Garhart v. State](#), 147 P.3d 746 (Alaska Ct. App. 2006).
- 7 [Garhart v. State](#), 147 P.3d 746 (Alaska Ct. App. 2006); [Hotrum v. State](#), 130 P.3d 965 (Alaska Ct. App. 2006).
- 8 Cal.—[People v. Davis](#), 92 Cal. App. 3d 250, 154 Cal. Rptr. 817 (1st Dist. 1979).
- 9 Alaska—[State v. Erickson](#), 574 P.2d 1 (Alaska 1978).

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## 16B C.J.S. Constitutional Law § 1180

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### b. Home and Family Privacy

## § 1180. Public activities

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [1210](#), [1218](#), [1225](#) to [1275](#)

**The right of privacy is intended to protect the sanctity of the home and family from excessive government interference, not to spread a protective cloak around all the public activities of consenting adults.**

The right of privacy is intended to protect the sanctity of the home and family from excessive government interference, not to spread a protective cloak around all the public activities of consenting adults.<sup>1</sup> Accordingly, the right of privacy protects a myriad of activities which may be lawfully conducted within the privacy and confines of the home but may be prohibited in public.<sup>2</sup> When, therefore, a person leaves the privacy of his or her home and exposes himself or herself and his or her effects to the public and its independent powers of perception, such person cannot expect to preserve the same degree of privacy for himself or herself or his or her affairs as the person could expect at home.<sup>3</sup>

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Footnotes

- 1 U.S.—*Star v. Preller*, 375 F. Supp. 1093 (D. Md. 1974), judgment *aff'd*, 419 U.S. 956, 95 S. Ct. 217, 42 L. Ed. 2d 173 (1974).
- 2 Ind.—*State ex rel. Pollard v. Criminal Court of Marion County, Division One*, 263 Ind. 236, 329 N.E.2d 573 (1975).  
**Public indecency**  
Ill.—*People v. Garrison*, 82 Ill. 2d 444, 45 Ill. Dec. 132, 412 N.E.2d 483 (1980).
- 3 Mont.—*State v. Ditton*, 2006 MT 235, 333 Mont. 483, 144 P.3d 783 (2006).

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## 16B C.J.S. Constitutional Law § 1181

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### b. Home and Family Privacy

## § 1181. Public activities—Obscene materials

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [1210](#), [1218](#), [1225](#) to [1275](#)

**The right of privacy to possess obscene materials is generally restricted to the home, and the privacy of the home is not equated with a zone of privacy that follows a consumer of obscene materials wherever he or she goes.**

The right of privacy to possess obscene materials is generally restricted to the home<sup>1</sup> though the possession of child pornography within the home is not protected by the constitutional right of privacy within the home.<sup>2</sup> A statute prohibiting the promotion of pornographic adult magazines violates the purchasers' state constitutional right to view those items in the privacy of their own homes.<sup>3</sup> Where, however, it is a fair inference from the evidence that accuseds are using their home to store large quantities of obscene material for supply to a book store, a search of the home does not violate the accuseds' right to privacy.<sup>4</sup>

The privacy of the home is not equated with a zone of privacy that follows a consumer of obscene materials wherever he or she goes.<sup>5</sup> Thus, for the purposes of the right of privacy, a commercial theater cannot be equated with a home,<sup>6</sup> and the viewing of obscene films in a commercial theater open to the adult public, or the transporting such films in common carriers in interstate

commerce, has no claim to the special consideration and safeguards which the Federal Constitution extends to the privacy of the home.<sup>7</sup>

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Footnotes

- 1 U.S.—*Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446 (1973).  
Okla.—*Davis v. State*, 1996 OK CR 15, 916 P.2d 251 (Okla. Crim. App. 1996).  
Tex.—*Varkonyi v. State*, 276 S.W.3d 27 (Tex. App. El Paso 2008), petition for discretionary review refused, (Oct. 29, 2008).
- 2 Okla.—*Davis v. State*, 1996 OK CR 15, 916 P.2d 251 (Okla. Crim. App. 1996).
- 3 Haw.—*State v. Kam*, 69 Haw. 483, 748 P.2d 372 (1988).
- 4 Mo.—*State ex rel. Wampler v. Bird*, 499 S.W.2d 780 (Mo. 1973).
- 5 U.S.—*Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446 (1973).  
As to the propriety of the restriction of obscene materials or devices, generally, see § 1173.  
**Materials moved outside home area**  
No zone of constitutionally protected privacy follows obscene materials when they are moved outside the privacy of the home area.  
U.S.—*U.S. v. Orito*, 413 U.S. 139, 93 S. Ct. 2674, 37 L. Ed. 2d 513 (1973).
- 6 U.S.—*Paris Adult Theatre I v. Slaton*, 413 U.S. 49, 93 S. Ct. 2628, 37 L. Ed. 2d 446 (1973).
- 7 U.S.—*U.S. v. Orito*, 413 U.S. 139, 93 S. Ct. 2674, 37 L. Ed. 2d 513 (1973).  
**Computer billboard**  
U.S.—*U.S. v. Thomas*, 74 F.3d 701, 43 Fed. R. Evid. Serv. 969, 1996 FED App. 0032P (6th Cir. 1996).

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## 16B C.J.S. Constitutional Law § 1182

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### c. Associational Privacy

## § 1182. Associational privacy, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1225 to 1275, 1445

**The right of privacy in group associations may, in many circumstances, be indispensable to the preservation of the freedom of association.**

The right of privacy in group associations may, in many circumstances, be indispensable to the preservation of the freedom of association.<sup>1</sup> While this is particularly true where a group espouses dissident beliefs,<sup>2</sup> associational privacy is not limited to association with groups espousing unorthodox or unpopular views.<sup>3</sup>

The right of associational privacy derives from the rights of an organization's members to advocate their personal points of view in the most effective way.<sup>4</sup> Thus, groups which are engaged in activities which are neither illegal or subversive are protected in their rights of free and private association.<sup>5</sup> Compulsory disclosure of the names of the members of an organization may infringe constitutionally protected rights<sup>6</sup> where such organization is engaged in the advocacy of particular beliefs<sup>7</sup> and where identification and fear of reprisal might deter perfectly peaceful discussions of public matters of importance.<sup>8</sup> It is not, however,



enough merely to claim fear of potential reprisal or harassment and, in order for a group to claim that membership disclosure violates the right of privacy, they must make a detailed factual showing of actual threats or incidents of harassment.<sup>9</sup>

The invasion of privacy of belief may be as great when the information sought concerns the giving and spending of money, as when it concerns the joining of organizations.<sup>10</sup> Contributors and members are, therefore, treated interchangeably in this context.<sup>11</sup> Additionally, the test for safeguarding the First Amendment interests of minor parties and their members and supporters by exempting minor parties from compelled disclosure of its contributors' names if the disclosure will subject them to threats, harassment, or reprisals<sup>12</sup> applies not only to compelled disclosure of campaign contributors but also to compelled disclosure of the names of recipients of campaign disbursements.<sup>13</sup>

### *Legislative subpoena.*

Where information relating to a group or organization is sought by a legislative subpoena for the purpose of gathering information on a subject on which legislation may be had, there is no unconstitutional invasion of privacy.<sup>14</sup>

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#### Footnotes

- 1 U.S.—*Familias Unidas v. Briscoe*, 619 F.2d 391 (5th Cir. 1980); *National Ass'n of Mfrs. v. Taylor*, 582 F.3d 1 (D.C. Cir. 2009).  
As to the constitutional right of privacy with respect to home privacy, generally, see §§ 1178 et seq.  
**Scope of right**  
Among the protections afforded by the freedom of association are the rights to not associate, to privacy in one's associations, and to be free from governmental interference with the internal affairs and organization of one's associations.  
S.C.—*Disabato v. South Carolina Ass'n of School Adm'rs*, 404 S.C. 433, 746 S.E.2d 329 (2013).  
**Constitutional derivation of right of intimate association**  
Wash.—*City of Bremerton v. Widell*, 146 Wash. 2d 561, 51 P.3d 733 (2002).  
**Association of persons within a person's home protected**  
U.S.—*Fisher v. Snyder*, 346 F. Supp. 396 (D. Neb. 1972), judgment aff'd, 476 F.2d 375 (8th Cir. 1973).
- 2 U.S.—*National Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958); *Familias Unidas v. Briscoe*, 619 F.2d 391 (5th Cir. 1980).
- 3 Cal.—*Church of Hakeem, Inc. v. Superior Court*, 110 Cal. App. 3d 384, 168 Cal. Rptr. 13 (1st Dist. 1980).
- 4 U.S.—*Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).  
Cal.—*Hill v. National Collegiate Athletic Assn.*, 7 Cal. 4th 1, 26 Cal. Rptr. 2d 834, 865 P.2d 633, 88 Ed. Law Rep. 327 (1994).
- 5 U.S.—*Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963).
- 6 U.S.—*Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963); *Familias Unidas v. Briscoe*, 619 F.2d 391 (5th Cir. 1980); *National Ass'n of Mfrs. v. Taylor*, 582 F.3d 1 (D.C. Cir. 2009).
- 7 U.S.—*Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 83 S. Ct. 889, 9 L. Ed. 2d 929 (1963); *National Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963).  
N.Y.—*Figari v. New York Tel. Co.*, 32 A.D.2d 434, 303 N.Y.S.2d 245 (2d Dep't 1969).
- 8 U.S.—*Pollard v. Roberts*, 283 F. Supp. 248 (E.D. Ark. 1968), judgment aff'd, 393 U.S. 14, 89 S. Ct. 47, 21 L. Ed. 2d 14 (1968).  
U.S.—*Doe v. Martin*, 404 F. Supp. 753 (D.D.C. 1975).

- 9 U.S.—Nader v. Schaffer, 417 F. Supp. 837 (D. Conn. 1976), judgment *aff'd*, 429 U.S. 989, 97 S. Ct. 516,  
50 L. Ed. 2d 602 (1976).
- 10 U.S.—Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).
- 11 U.S.—Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).
- 12 U.S.—Buckley v. Valeo, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).
- 13 U.S.—Brown v. Socialist Workers '74 Campaign Committee (Ohio), 459 U.S. 87, 103 S. Ct. 416, 74 L. Ed.  
2d 250 (1982).
- 14 U.S.—Eastland v. U. S. Servicemen's Fund, 421 U.S. 491, 95 S. Ct. 1813, 44 L. Ed. 2d 324 (1975).

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## 16B C.J.S. Constitutional Law § 1183

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 1. Personal, Home, and Associational Privacy

##### c. Associational Privacy

## § 1183. Justification of restriction on right of associational privacy

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1225 to 1275

**Compulsory disclosures of membership lists or organizational ties will only be permitted when the act of disclosure or the information sought is shown to be substantially related to a legitimate and compelling or overriding governmental interest and if drawn with sufficiently narrow specificity to avoid impinging on constitutional rights more broadly than necessary.**

Although the right of associational privacy must not be narrowly construed by the courts,<sup>1</sup> such right is not absolute, and in some circumstances, disclosure may be permissibly compelled.<sup>2</sup> In any event, the courts apply an exacting scrutiny to compulsory disclosures of membership lists or organizational ties,<sup>3</sup> and such disclosure cannot be justified by a mere showing of some legitimate governmental interest.<sup>4</sup> Accordingly, compulsory disclosures will only be permitted when the act of disclosure or the information sought is shown to be substantially related to a legitimate and compelling or overriding governmental interest.<sup>5</sup> Furthermore, even where statutory disclosure requirements are shown to be related to a compelling or overriding legitimate governmental purpose, they will only be permitted if drawn with sufficiently narrow specificity to avoid impinging

on constitutional rights more broadly than necessary.<sup>6</sup> Where, therefore, such requirements are overbroad in their effect, they are unconstitutional infringements on the right of privacy.<sup>7</sup>

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Footnotes

- 1 N.Y.—*People v. Collier*, 85 Misc. 2d 529, 376 N.Y.S.2d 954 (Sup 1975).
- 2 Cal.—*Church of Hakeem, Inc. v. Superior Court*, 110 Cal. App. 3d 384, 168 Cal. Rptr. 13 (1st Dist. 1980).
- 3 U.S.—*Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976); *National Ass'n for Advancement of Colored People v. State of Ala. ex rel. Patterson*, 357 U.S. 449, 78 S. Ct. 1163, 2 L. Ed. 2d 1488 (1958); *Federal Election Commission v. Machinists Non-Partisan Political League*, 655 F.2d 380 (D.C. Cir. 1981).
- 4 U.S.—*Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).  
**Private association affiliations presumptively immune from government inquiry**  
Cal.—*Britt v. Superior Court*, 20 Cal. 3d 844, 143 Cal. Rptr. 695, 574 P.2d 766 (1978).
- 5 U.S.—*Brown v. Socialist Workers '74 Campaign Committee (Ohio)*, 459 U.S. 87, 103 S. Ct. 416, 74 L. Ed. 2d 250 (1982); *Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).  
N.Y.—*New York State Club Ass'n, Inc. v. City of New York*, 69 N.Y.2d 211, 513 N.Y.S.2d 349, 505 N.E.2d 915 (1987), judgment aff'd, 487 U.S. 1, 108 S. Ct. 2225, 101 L. Ed. 2d 1 (1988).  
As to a compelling or overriding governmental interest justifying interference with the constitutional right of privacy, generally, see § 1169.
- 6 U.S.—*Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976); *Familias Unidas v. Briscoe*, 619 F.2d 391 (5th Cir. 1980).  
As to narrowly drawn enactments or rules regulating the constitutional right of privacy, generally, see § 1169.
- 7 U.S.—*Familias Unidas v. Briscoe*, 619 F.2d 391 (5th Cir. 1980).  
Cal.—*Britt v. Superior Court*, 20 Cal. 3d 844, 143 Cal. Rptr. 695, 574 P.2d 766 (1978).

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## 16B C.J.S. Constitutional Law § 1184

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

###### a. In General

## § 1184. Avoiding disclosure of personal matters, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1225, 1227 to 1236

### A.L.R. Library

[What constitutes personal matters exempt from disclosure by invasion of privacy exemption under state freedom of information act, 26 A.L.R.4th 666](#)

**Where there is a constitutionally protected zone of privacy, compelled disclosure of private matters may, in itself, be an invasion of that zone.**

Pursuant to the aspect of the constitutional right of privacy which affords protection to an individual's interest in avoiding disclosure of personal matters<sup>1</sup> where there is a constitutionally protected zone of privacy, compelled disclosure of private

matters may, in itself, be an invasion of that zone.<sup>2</sup> Absent a strong governmental interest justifying disclosure of certain types of personal information,<sup>3</sup> such information is protected from compelled disclosure.<sup>4</sup> The constitutional right of privacy extends to various records and information relating to one's personal identity,<sup>5</sup> medical records and information,<sup>6</sup> as well as educational<sup>7</sup> and employment records.<sup>8</sup> Personal financial records and information have been held to be protected by the right of privacy under some decisions,<sup>9</sup> but there is authority to the contrary.<sup>10</sup>

An individual's privacy interest in avoiding disclosure is not generally, however, absolute<sup>11</sup> but must be balanced against a need for disclosure.<sup>12</sup> Nevertheless, in order that a governmental requirement of disclosure may withstand a constitutional challenge, a substantial relationship must exist between the information sought to be disclosed and the significant governmental interests to be served by such disclosure.<sup>13</sup>

The constitutional right of privacy does not encompass the right of an individual to prevent disclosure by one governmental agency to another governmental agency of information obtained in the course of the transmitting agency's regular functions.<sup>14</sup> This is so, at least, in the absence of circumstances where the government is possessed of highly personal and confidential information given under compulsion of law with an expectation of privacy and where disclosure is unnecessary for the advancement of the purposes for which the data was obtained.<sup>15</sup>

### ***Genetic information.***

Under the Fourth Amendment and the state constitution, a person has a privacy interest in his or her own DNA profile and genetic information even if only obtained and used for identification purposes.<sup>16</sup>

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### Footnotes

- 1 Colo.—*In re District Court, City and County of Denver*, 09CV7235, 256 P.3d 687 (Colo. 2011).  
 Mont.—*Montana Shooting Sports Ass'n, Inc. v. State*, 2010 MT 8, 355 Mont. 49, 224 P.3d 1240 (2010).  
**Guarantee of privacy encompasses confidential, informational privacy**  
 Mont.—*St. James Community Hosp., Inc. v. District Court*, 2003 MT 261, 317 Mont. 419, 77 P.3d 534 (2003).  
 As to the constitutional right of privacy as protecting only a reasonable expectation of privacy, generally, see § 1167.
- 2 U.S.—*Shuman v. City of Philadelphia*, 470 F. Supp. 449 (E.D. Pa. 1979).  
 Cal.—*Ignat v. Yum! Brands, Inc.*, 214 Cal. App. 4th 808, 154 Cal. Rptr. 3d 275 (4th Dist. 2013).  
 Fla.—*Favalora v. Sidaway*, 996 So. 2d 895 (Fla. 4th DCA 2008).  
 As to the nature and extent of the right of privacy, generally, see §§ 1166 et seq.  
**Extension beyond statute's protection**  
 Cal.—*Jones v. Superior Court*, 119 Cal. App. 3d 534, 174 Cal. Rptr. 148 (1st Dist. 1981).
- 3 U.S.—*Shuman v. City of Philadelphia*, 470 F. Supp. 449 (E.D. Pa. 1979).  
 Cal.—*Overstock.Com, Inc. v. Goldman Sachs Group, Inc.*, 231 Cal. App. 4th 471, 180 Cal. Rptr. 3d 234 (1st Dist. 2014).  
 As to the compelling or overriding governmental interest justifying a restriction of the constitutional right of privacy, generally, see § 1169.
- 4 U.S.—*Shuman v. City of Philadelphia*, 470 F. Supp. 449 (E.D. Pa. 1979).  
 Cal.—*Overstock.Com, Inc. v. Goldman Sachs Group, Inc.*, 231 Cal. App. 4th 471, 180 Cal. Rptr. 3d 234 (1st Dist. 2014).  
 Fla.—*Favalora v. Sidaway*, 996 So. 2d 895 (Fla. 4th DCA 2008).  
 Haw.—*State v. Lester*, 64 Haw. 659, 649 P.2d 346 (1982).

- 5                   **Forms of identity information**  
Names, addresses, and telephone numbers are forms of identity information that can be considered private and confidential information for purposes of the state constitution's guarantee of the right to privacy.  
Fla.—[Favalora v. Sidaway](#), 996 So. 2d 895 (Fla. 4th DCA 2008).  
**Social Security number**  
Constitution does not provide right to privacy in one's social security number.  
U.S.—[Cassano v. Carb](#), 436 F.3d 74 (2d Cir. 2006).  
**Driver license records**  
The department of motor vehicles' disclosure of driver licensing records violates neither a subjective nor objective expectation of privacy.  
Wash.—[State v. Phillips](#), 126 Wash. App. 584, 109 P.3d 470 (Div. 3 2005).
- 6                   §§ 1187, 1188.
- 7                   Haw.—[Brende v. Hara](#), 113 Haw. 424, 153 P.3d 1109 (2007).  
**College transcript**  
Cal.—[Ignat v. Yum! Brands, Inc.](#), 214 Cal. App. 4th 808, 154 Cal. Rptr. 3d 275 (4th Dist. 2013).  
Haw.—[Brende v. Hara](#), 113 Haw. 424, 153 P.3d 1109 (2007).
- 8                   U.S.—[Mangum v. Action Collection Service, Inc.](#), 575 F.3d 935 (9th Cir. 2009).
- 9                   Cal.—[Overstock.Com, Inc. v. Goldman Sachs Group, Inc.](#), 231 Cal. App. 4th 471, 180 Cal. Rptr. 3d 234 (1st Dist. 2014).  
Fla.—[Posner v. Posner](#), 940 So. 2d 524 (Fla. 4th DCA 2006).  
Haw.—[Brende v. Hara](#), 113 Haw. 424, 153 P.3d 1109 (2007).  
Ill.—[People v. Nesbitt](#), 405 Ill. App. 3d 823, 345 Ill. Dec. 161, 938 N.E.2d 600 (2d Dist. 2010).  
N.Y.—[Kosmider v. Garcia](#), 111 A.D.3d 1134, 976 N.Y.S.2d 256 (3d Dep't 2013).
- 10                  **Banking records**  
There are no constitutional rights to privacy affected by disclosure of banking records or in personal financial records.  
Tex.—[Neely v. Commission for Lawyer Discipline](#), 302 S.W.3d 331 (Tex. App. Houston 14th Dist. 2009).  
**Tax returns**  
There is no absolute right to privacy from discovery orders to produce tax returns; generally, a litigant may discover an opponent's tax returns for the sake of determining a party's damages.  
Alaska—[Marron v. Stromstad](#), 123 P.3d 992 (Alaska 2005).
- 11                  Cal.—[County of San Diego v. Mason](#), 209 Cal. App. 4th 376, 147 Cal. Rptr. 3d 135 (4th Dist. 2012).  
Mont.—[State v. Brooks](#), 2012 MT 263, 367 Mont. 59, 289 P.3d 105 (2012).  
As to the qualified nature of the constitutional right of privacy, generally, see § 1168.
- 12                  Cal.—[Overstock.Com, Inc. v. Goldman Sachs Group, Inc.](#), 231 Cal. App. 4th 471, 180 Cal. Rptr. 3d 234 (1st Dist. 2014).  
La.—[State v. Thigpen](#), 963 So. 2d 478 (La. Ct. App. 2d Cir. 2007).  
Mont.—[State v. Brooks](#), 2012 MT 263, 367 Mont. 59, 289 P.3d 105 (2012).  
Wash.—[State v. Reeder](#), 181 Wash. App. 897, 330 P.3d 786 (Div. 1 2014).  
Wis.—[State v. Wilcenski](#), 2013 WI App 21, 346 Wis. 2d 145, 827 N.W.2d 642 (Ct. App. 2013), review denied, 2013 WI 80, 353 Wis. 2d 430, 839 N.W.2d 617 (2013).
- 13                  **Proof of need**  
The state constitution protects the financial information of persons if there is no relevant or compelling reason to compel disclosure; the burden to prove the information is relevant or reasonably calculated to lead to the discovery of admissible evidence is on the party seeking the information.  
Fla.—[Rowe v. Rodriguez-Schmidt](#), 89 So. 3d 1101 (Fla. 2d DCA 2012).  
Cal.—[Overstock.Com, Inc. v. Goldman Sachs Group, Inc.](#), 231 Cal. App. 4th 471, 180 Cal. Rptr. 3d 234 (1st Dist. 2014).  
**Justification by government**  
To justify actions infringing upon the right to constitutional informational privacy, the government must show that its use of the information would advance a legitimate state interest and that its actions are narrowly tailored to meet that interest.  
U.S.—[Nelson v. National Aeronautics and Space Admin.](#), 506 F.3d 713 (9th Cir. 2007).  
Wash.—[State v. Sanchez](#), 177 Wash. 2d 835, 306 P.3d 935 (2013).

- 14 U.S.—*Jaffess v. Secretary, Dept. of Health, Ed. and Welfare*, 393 F. Supp. 626 (S.D. N.Y. 1975).
- 15 U.S.—*Jaffess v. Secretary, Dept. of Health, Ed. and Welfare*, 393 F. Supp. 626 (S.D. N.Y. 1975).  
As to the disclosure of private matters under the compulsion of law, generally, see § 1186.
- 16 Cal.—*County of San Diego v. Mason*, 209 Cal. App. 4th 376, 147 Cal. Rptr. 3d 135 (4th Dist. 2012).  
As to privacy of body and person, generally, see § 1170.  
As to privacy of medical records and information, see §§ 1187, 1188.

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## 16B C.J.S. Constitutional Law § 1185

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### a. In General

## § 1185. Internet and electronic data

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1225, 1236.

**Private emails may be protected by the constitutional right of privacy, but noncontent computer data may not be so protected.**

Private emails may be protected by the constitutional right of privacy<sup>1</sup> where there is a reasonable expectation of privacy,<sup>2</sup> and the governmental interest asserted is outweighed by the individual's right of privacy.<sup>3</sup>

There is no constitutional privacy protection in issuing a subpoena for an internet service provider's subscriber address or use information disclosing noncontent data<sup>4</sup> since internet users have no reasonable expectation of privacy in their subscriber information, the length of their stored files, and other noncontent data to which service providers must have access.<sup>5</sup>

Similarly, internet users do not have a privacy interest in their public postings with an online social networking service (Twitter) even if the postings contained sensitive personal information<sup>6</sup> since they lack a legitimate expectation of privacy in materials intended for publication or public posting.<sup>7</sup>

Probation conditions requiring a defendant to surrender his passwords for electronic devices and social media internet websites were not unconstitutionally overbroad in violation of defendant's constitutional right to privacy<sup>8</sup> where the conditions were designed to serve a governmental interest to monitor and suppress defendant's gang activity; defendant was a criminal street gang member who promoted his gang on social media, and defendant's violent gang associations had resulted in threats and physical resistance to armed police officers.<sup>9</sup>

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#### Footnotes

- 1 La.—*Shane v. Parish of Jefferson*, 150 So. 3d 406 (La. Ct. App. 5th Cir. 2014), writ granted, 157 So. 3d 1137 (La. 2015).
- 2 La.—*Shane v. Parish of Jefferson*, 150 So. 3d 406 (La. Ct. App. 5th Cir. 2014), writ granted, 157 So. 3d 1137 (La. 2015).  
**No reasonable expectation of privacy**  
Fla.—*A.H. v. State*, 949 So. 2d 234 (Fla. 1st DCA 2007).
- 3 La.—*Shane v. Parish of Jefferson*, 150 So. 3d 406 (La. Ct. App. 5th Cir. 2014), writ granted, 157 So. 3d 1137 (La. 2015).
- 4 Vt.—*State v. Simmons*, 190 Vt. 141, 2011 VT 69, 27 A.3d 1065 (2011).
- 5 Vt.—*State v. Simmons*, 190 Vt. 141, 2011 VT 69, 27 A.3d 1065 (2011).
- 6 N.Y.—*People v. Harris*, 36 Misc. 3d 613, 945 N.Y.S.2d 505 (N.Y. City Crim. Ct. 2012).
- 7 N.Y.—*People v. Harris*, 36 Misc. 3d 613, 945 N.Y.S.2d 505 (N.Y. City Crim. Ct. 2012).
- 8 Cal.—*People v. Ebertowski*, 228 Cal. App. 4th 1170, 176 Cal. Rptr. 3d 413 (6th Dist. 2014), review denied, (Oct. 29, 2014).
- 9 Cal.—*People v. Ebertowski*, 228 Cal. App. 4th 1170, 176 Cal. Rptr. 3d 413 (6th Dist. 2014), review denied, (Oct. 29, 2014).

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## 16B C.J.S. Constitutional Law § 1186

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### a. In General

## § 1186. Compulsion of law to disclose personal information

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1225, 1227 to 1236

**The constitutional right of privacy may generally be invoked by a litigant as justification for a refusal to answer questions which unreasonably intrude on that right, but such right does not come into play simply because a litigant would rather not reveal something during the discovery process.**

The constitutional right of privacy may generally be invoked by a litigant as justification for a refusal to answer questions which unreasonably intrude on that right, but such right does not come into play simply because a litigant would rather not reveal something during the discovery process.<sup>1</sup> Thus, since judicial discovery orders inevitably involve government-compelled disclosure of presumptively protected information, the principles of the constitutional guaranty of privacy have application to purely private litigation,<sup>2</sup> but the constitutional principle that compelled disclosure be narrowly drawn to assure maximum protection to the constitutional interests at stake denies the validity of a dragnet during a discovery procedure.<sup>3</sup> Accordingly, inquiry into a person's private affairs will not be constitutionally justified simply because the inadmissible and irrelevant matter sought to be discovered might lead to other relevant evidence.<sup>4</sup>

When a party invokes the right to confidentiality or privacy in information being sought through discovery, the trial court must balance the policy in favor of broad disclosure with the individual's right to keep personal information private; under the balancing test, the trial court must require the requesting party to prove that it has a compelling need for the information, that the information being sought is not available from other sources, and that it is using the least intrusive means to obtain the information.<sup>5</sup>

In particular judicial proceedings, an individual's right of privacy is not violated by compelling his or her testimony.<sup>6</sup>

### ***Medical examination.***

Physical or mental examination of a party may be ordered by a court only when the party to be examined has put his or her physical or mental condition at issue and when there is good cause for the examination;<sup>7</sup> the need for such examination must be balanced against the right of personal privacy.<sup>8</sup> In certain instances, an order requiring a party to undergo a medical exam or test will not be deemed to violate his or her right to privacy.<sup>9</sup>

### ***Subpoena.***

In the absence of evidence that a subpoena duces tecum directed at a witness in civil litigation invades reasonable and preexisting expectations of privacy, such a subpoena generally does not violate the witness' rights of privacy.<sup>10</sup> Similarly, in particular circumstances, compliance with a grand jury subpoena duces tecum requiring the production of certain records is not an unconstitutional intrusion into a defendant's right of privacy.<sup>11</sup>

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### Footnotes

- 1 Cal.—*Fults v. Superior Court*, 88 Cal. App. 3d 899, 152 Cal. Rptr. 210 (1st Dist. 1979).  
 Tex.—*In re Crestcare Nursing and Rehabilitation Center*, 222 S.W.3d 68 (Tex. App. Tyler 2006).  
**Disclosure of information relevant to litigant's claim**  
 Alaska—*DeNardo v. ABC Inc. RVs Motorhomes*, 51 P.3d 919 (Alaska 2002).
- 2 Cal.—*Digital Music News LLC v. Superior Court*, 226 Cal. App. 4th 216, 171 Cal. Rptr. 3d 799 (2d Dist. 2014).  
 Colo.—*Gateway Logistics, Inc. v. Smay*, 2013 CO 25, 302 P.3d 235 (Colo. 2013).  
 Fla.—*Killinger v. Guardianship of Grable*, 983 So. 2d 30 (Fla. 5th DCA 2008).  
**Limited to particular litigation**  
 Haw.—*Cohan v. Ayabe*, 132 Haw. 408, 322 P.3d 948 (2014).
- 3 Cal.—*Fults v. Superior Court*, 88 Cal. App. 3d 899, 152 Cal. Rptr. 210 (1st Dist. 1979).  
 Fla.—*Ryan v. Landsource Holding Co., LLC*, 127 So. 3d 764 (Fla. 2d DCA 2013).
- 4 Cal.—*Board of Trustees v. Superior Court*, 119 Cal. App. 3d 516, 174 Cal. Rptr. 160 (1st Dist. 1981).
- 5 U.S.—*In re Motor Fuel Temperature Sales Practices Litigation*, 641 F.3d 470 (10th Cir. 2011).  
 Alaska—*Noffke v. Perez*, 178 P.3d 1141 (Alaska 2008).  
 Cal.—*Snibbe v. Superior Court*, 224 Cal. App. 4th 184, 168 Cal. Rptr. 3d 548 (2d Dist. 2014), review denied, (May 14, 2014).  
 Colo.—*Gateway Logistics, Inc. v. Smay*, 2013 CO 25, 302 P.3d 235 (Colo. 2013).  
 Fla.—*245 Venetian Court Bldg. 4, Inc. v. Harrison*, 149 So. 3d 1176 (Fla. 2d DCA 2014).  
 Tex.—*In re Crestcare Nursing and Rehabilitation Center*, 222 S.W.3d 68 (Tex. App. Tyler 2006).
- 6 Ind.—*Kuhn v. State ex rel. Van Natta*, 402 N.E.2d 38 (Ind. Ct. App. 1980).
- 7 Mont.—*Lewis v. Montana Eighth Judicial Dist. Court*, 2012 MT 200, 366 Mont. 217, 286 P.3d 577 (2012).

- 8 Mont.—[Lewis v. Montana Eighth Judicial Dist. Court](#), 2012 MT 200, 366 Mont. 217, 286 P.3d 577 (2012).
- 9 As to the requirement that an accused submit to certain medical examinations or tests, generally, see § 1195.  
**Claimant seeking compensation for injuries**  
Wis.—[Mazurek v. Miller](#), 100 Wis. 2d 426, 303 N.W.2d 122 (Ct. App. 1981).  
**HIV test of spouse**  
Cal.—[John B. v. Superior Court](#), 38 Cal. 4th 1177, 45 Cal. Rptr. 3d 316, 137 P.3d 153 (2006).  
**Paternity test**  
Cal.—[County of San Diego v. Mason](#), 209 Cal. App. 4th 376, 147 Cal. Rptr. 3d 135 (4th Dist. 2012).
- 10 U.S.—[U.S. v. International Business Machines Corp.](#), 83 F.R.D. 92 (S.D. N.Y. 1979).  
As to the constitutional right of privacy as protecting only a reasonable expectation of privacy, generally, see § 1167.  
As to the constitutional right of privacy with respect to subpoenas for an individual's medical records and information, generally, see §§ 1187 et seq.
- 11 N.Y.—[Maison & Co. v. Hynes](#), 50 A.D.2d 13, 375 N.Y.S.2d 878 (1st Dep't 1975).

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## 16B C.J.S. Constitutional Law § 1187

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### b. Medical Records and Information

## § 1187. Medical records

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1225, 1227 to 1236

**An individual's medical records are generally within the ambit of materials entitled to privacy protection.**

An individual's medical records,<sup>1</sup> which may contain intimate facts of a personal nature,<sup>2</sup> are generally within the ambit of materials entitled to privacy protection. Such right to privacy is not, however, absolute.<sup>3</sup> Thus, an individual privacy interest in the patient's medical records must be balanced against the legitimate interests of the State in securing the information contained in such records.<sup>4</sup> Whether a compelling state interest can be shown, in order to override an individual's constitutional privacy interest in medical records, must be determined on a case-by-case basis.<sup>5</sup>

The right to privacy in an individual's medical records extends to prescription records.<sup>6</sup>

The enforcement of a subpoena for the medical records of a corporation's employees<sup>7</sup> or of the patients of a physician,<sup>8</sup> or for certain information contained in hospital records,<sup>9</sup> does not infringe upon an individual's privacy interests where there is no

showing that the information sought will be used improperly.<sup>10</sup> The enforcement of a subpoena for medical records also does not infringe upon a person's privacy interests where the court, in enforcing the subpoena, includes in its order security provisions to insure the proper disposition of the subpoenaed records<sup>11</sup> as where the anonymity of the person concerned is preserved and the requested information is released pursuant to a confidentiality order<sup>12</sup> or where there are otherwise substantial procedures available to protect public disclosure of the individual's name.<sup>13</sup>

### *Prescription records of controlled substances.*

While the right to privacy in an individual's medical records has been held to extend to prescription records,<sup>14</sup> it has also been held that the patient's right of privacy is not violated by permitting access to controlled substance prescription records by state, local, or federal agencies for the purposes of criminal or disciplinary investigations.<sup>15</sup>

A pharmacy's provision of defendant's prescription records to law enforcement officer in compliance with statute requiring pharmacies to produce, for inspection and copying by law enforcement officers, records of controlled substances sold and dispensed, without subpoena or warrant, did not violate defendant's state constitutional right to privacy<sup>16</sup> where the statute was narrowly tailored to effectuate the compelling state interest in regulating controlled substances.<sup>17</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Medical records of cancer patients, who were not parties to action by radiation oncology physicians against hospital that provided site and support services for performance of oncology therapies, brought to resolve what amounted to contract dispute between competing cancer treatment providers, were protected from discovery in such action, under privacy protections afforded by state constitution, even though physicians were in lawful possession of such records; patients, in addition to being non-parties, had not consented to use of their records in relation to lawsuit, and no compelling state interest was shown. Const. Art. 1, § 6. *Pacific Radiation Oncology, LLC v. Queen's Medical Center*, 138 Haw. 14, 375 P.3d 1252 (2016).

### [END OF SUPPLEMENT]

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### Footnotes

- 1 Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014).  
Fla.—*Poston v. Wiggins*, 112 So. 3d 783 (Fla. 1st DCA 2013).  
Haw.—*Cohan v. Ayabe*, 132 Haw. 408, 322 P.3d 948 (2014).  
Mont.—*Malcomson v. Northwest*, 2014 MT 242, 376 Mont. 306, 339 P.3d 1235 (2014).  
Tenn.—*McNiel v. Cooper*, 241 S.W.3d 886 (Tenn. Ct. App. 2007).  
Tex.—*In re Crestcare Nursing and Rehabilitation Center*, 222 S.W.3d 68 (Tex. App. Tyler 2006).  
**Medical and mental health records**  
Iowa—*Ashenfelter v. Mulligan*, 792 N.W.2d 665 (Iowa 2010).  
**Medical and psychiatric history**  
Mont.—*T.L.S. v. Montana Advocacy Program*, 2006 MT 262, 334 Mont. 146, 144 P.3d 818 (2006).
- 2 U.S.—*Matson v. Board of Educ. of City School Dist. of New York*, 631 F.3d 57, 264 Ed. Law Rep. 541 (2d Cir. 2011).

- 3 U.S.—*Matson v. Board of Educ. of City School Dist. of New York*, 631 F.3d 57, 264 Ed. Law Rep. 541 (2d Cir. 2011).  
Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014).  
Conn.—*State v. Legrand*, 129 Conn. App. 239, 20 A.3d 52 (2011).  
Fla.—*State v. Salle-Green*, 93 So. 3d 1169 (Fla. 2d DCA 2012).  
Iowa—*Ashenfelter v. Mulligan*, 792 N.W.2d 665 (Iowa 2010).  
Md.—*Doe v. Maryland Bd. of Social Workers*, 154 Md. App. 520, 840 A.2d 744 (2004), *aff'd*, 384 Md. 161, 862 A.2d 996 (2004).
- 4 U.S.—*Seaton v. Mayberg*, 610 F.3d 530 (9th Cir. 2010).  
Ala.—*Ex parte St. Vincent's Hosp.*, 991 So. 2d 200 (Ala. 2008).  
Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014).  
Fla.—*Guardado v. State*, 61 So. 3d 1210 (Fla. 4th DCA 2011).  
Mont.—*Malcomson v. Northwest*, 2014 MT 242, 376 Mont. 306, 339 P.3d 1235 (2014).  
N.J.—*Aperuta v. Pirrello*, 381 N.J. Super. 449, 886 A.2d 1081 (App. Div. 2005).
- 5 Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014).  
Fla.—*Guardado v. State*, 61 So. 3d 1210 (Fla. 4th DCA 2011).  
Md.—*Jane Doe v. Maryland Bd. of Social Work Examiners*, 384 Md. 161, 862 A.2d 996 (2004).
- 6 U.S.—*Douglas v. Dobbs*, 419 F.3d 1097 (10th Cir. 2005).  
Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014).
- 7 U.S.—*General Motors Corp. v. Director of Nat. Institute for Occupational Safety and Health, Dept. of Health, Ed. and Welfare*, 636 F.2d 163 (6th Cir. 1980).  
As to disclosure of private matters under compulsion of law, generally, see § 1186.
- 8 U.S.—*Schachter v. Whalen*, 581 F.2d 35 (2d Cir. 1978).  
Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014).  
Tenn.—*McNiel v. Cooper*, 241 S.W.3d 886 (Tenn. Ct. App. 2007).
- 9 U.S.—*Robinson v. Magovern*, 83 F.R.D. 79, 4 Fed. R. Evid. Serv. 573, 4 Fed. R. Evid. Serv. 1313, 27 Fed. R. Serv. 2d 810, 27 Fed. R. Serv. 2d 1372 (W.D. Pa. 1979).  
**Grand jury subpoena**  
N.Y.—*People v. Doe*, 86 A.D.2d 672, 446 N.Y.S.2d 382 (2d Dep't 1982), order *aff'd*, 56 N.Y.2d 348, 452 N.Y.S.2d 361, 437 N.E.2d 1118 (1982).
- 10 Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014).
- 11 U.S.—*General Motors Corp. v. Director of Nat. Institute for Occupational Safety and Health, Dept. of Health, Ed. and Welfare*, 636 F.2d 163 (6th Cir. 1980).
- 12 Cal.—*Snibbe v. Superior Court*, 224 Cal. App. 4th 184, 168 Cal. Rptr. 3d 548 (2d Dist. 2014), review denied, (May 14, 2014).  
**Removing identifying information**  
Under Florida law, patient's constitutional right to privacy of medical records may be protected by removing all identifying information from records.  
U.S.—*State Farm Mut. Auto. Ins. Co. v. Kugler*, 840 F. Supp. 2d 1323 (S.D. Fla. 2011).
- 13 U.S.—*Schachter v. Whalen*, 581 F.2d 35 (2d Cir. 1978).
- 14 Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014).
- 15 **Investigation of physician**  
The Medical Board of California's access to patients' controlled substance prescription records, as part of investigation into a physician's possible prescribing of excessive medications in violation of the Medical Practice Act, did not violate the patients' constitutional rights to privacy.  
Cal.—*Medical Board of California v. Chiarottino*, 225 Cal. App. 4th 623, 170 Cal. Rptr. 3d 540 (1st Dist. 2014).



16 As to right of privacy in criminal matters, generally, see §§ 1193 to 1197.

17 Fla.—[State v. Yutzy](#), 43 So. 3d 910 (Fla. 2d DCA 2010).

Fla.—[State v. Yutzy](#), 43 So. 3d 910 (Fla. 2d DCA 2010).

**Narrowly tailored**

Pharmacy records statute only applied to controlled substance records, records did not convey information about defendant's medical condition, and data was not available to general public, but only to law enforcement officers whose duty it is to enforce the laws of the state relating to controlled substances.

Fla.—[State v. Tamulonis](#), 39 So. 3d 524 (Fla. 2d DCA 2010).

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## 16B C.J.S. Constitutional Law § 1188

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### b. Medical Records and Information

## § 1188. Medical information

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [1225](#), [1227](#) to [1236](#)

**Certain types of information communicated in the context of the physician-patient relationship generally fall within a constitutionally protected zone of privacy.**

Certain types of information communicated in the context of the physician-patient relationship generally fall within a constitutionally protected zone of privacy.<sup>1</sup> The right to privacy extends to the details of a patient's medical and psychiatric history.<sup>2</sup>

While the psychotherapist-patient privilege is an aspect of the patient's constitutional right to privacy,<sup>3</sup> the constitutional right of privacy does not provide absolute protection for communications between patients and their psychotherapists.<sup>4</sup>

A requirement that disclosures of private medical information be made to a representative of the State does not, however, automatically amount to an impermissible invasion of privacy,<sup>5</sup> and even material which is subject to protection can be required to be produced or disclosed upon a showing of a proper governmental interest.<sup>6</sup>

***Refusal to disclose patient's record to patient.***

The refusal by hospitals to disclose a patient's records to the patient does not violate the patient's right to privacy.<sup>7</sup>

**CUMULATIVE SUPPLEMENT**

**Cases:**

Medical Board Director's interest in investigating psychiatrist's suspected sexual relationship with patient was not a sufficiently compelling interest to overcome the constitutional psychotherapist-patient privilege as to the psychiatrist's progress notes about the patient, where both the patient and the psychiatrist objected to disclosure of the notes, any sexual relationship was unlikely to have been documented in the notes, and the trial court determined after in camera review of the notes that patient's privacy interest outweighed the Director's interest in disclosure. [Cal. Const. art. 1, § 1](#); [Cal. Bus. & Prof. Code § 726](#); [Cal. Gov't Code § 11187\(a\)](#). [Kirchmeyer v. Phillips](#), 245 Cal. App. 4th 1394, 200 Cal. Rptr. 3d 515 (4th Dist. 2016).

Patient's constitutional right to privacy was violated by statutory provisions requiring secret, ex parte interviews of patient's health care providers as a condition for patient's estate to bring medical malpractice action; ex parte interviews did not protect patient from even accidental disclosures of confidential medical information that fell outside scope of claim, and provisions coerced and forced patient to either forego right to privacy or forego fundamental constitutional right to access to courts. [Fla. Const. art. 1, §§ 21, 23](#); [Fla. Stat. Ann. §§ 766.106, 766.1065](#). [Weaver v. Myers](#), 229 So. 3d 1118 (Fla. 2017).

**[END OF SUPPLEMENT]**

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**Footnotes**

- 1 U.S.—[Seaton v. Mayberg](#), 610 F.3d 530 (9th Cir. 2010).  
Mont.—[Malcomson v. Northwest](#), 2014 MT 242, 376 Mont. 306, 339 P.3d 1235 (2014).  
**Nondisclosure of patient's HIV status**  
U.S.—[Doe v. Town of Plymouth](#), 825 F. Supp. 1102 (D. Mass. 1993).
- 2 Iowa—[Ashenfelter v. Mulligan](#), 792 N.W.2d 665 (Iowa 2010).  
Mont.—[T.L.S. v. Montana Advocacy Program](#), 2006 MT 262, 334 Mont. 146, 144 P.3d 818 (2006).
- 3 Cal.—[Sorenson v. Superior Court](#), 219 Cal. App. 4th 409, 161 Cal. Rptr. 3d 794 (6th Dist. 2013), review denied, (Nov. 13, 2013).
- 4 U.S.—[Caesar v. Mountanos](#), 542 F.2d 1064 (9th Cir. 1976).  
Cal.—[People v. Gonzales](#), 56 Cal. 4th 353, 154 Cal. Rptr. 3d 38, 296 P.3d 945 (2013).  
As to the constitutional right of privacy as a qualified right, generally, see § 1168.  
**Least intrusive means**  
Even a party who shows a compelling need for disclosure of patient-psychotherapist information may not obtain it without proving that there are no other less intrusive means of accomplishing the result.  
Cal.—[Akkerman v. Mecta Corp., Inc.](#), 152 Cal. App. 4th 1094, 62 Cal. Rptr. 3d 39 (2d Dist. 2007).
- 5 U.S.—[Whalen v. Roe](#), 429 U.S. 589, 97 S. Ct. 869, 51 L. Ed. 2d 64 (1977).  
Ala.—[Middlebrooks v. State Bd. of Health](#), 710 So. 2d 891 (Ala. 1998).
- 6 U.S.—[Seaton v. Mayberg](#), 610 F.3d 530 (9th Cir. 2010).

As to the compelling or overriding governmental interest justifying the restriction of the constitutional right of privacy, generally, see § 1169.

**Privacy interest outweighed**

Ky.—[Yeoman v. Com., Health Policy Bd.](#), 983 S.W.2d 459 (Ky. 1998).

**Factors considered**

Md.—[Doe v. Maryland Bd. of Social Workers](#), 154 Md. App. 520, 840 A.2d 744 (2004), *aff'd*, 384 Md. 161, 862 A.2d 996 (2004).

U.S.—[Gotkin v. Miller](#), 379 F. Supp. 859 (E.D. N.Y. 1974), *judgment aff'd*, 514 F.2d 125 (2d Cir. 1975).

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## 16B C.J.S. Constitutional Law § 1189

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### c. Candidates; Public Officials and Employees

##### (1) In General

## § 1189. Candidates; public officials

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1225, 1252 to 1258

**There are inherent limitations regarding any claim of the right of privacy on the part of candidates and incumbent public officials, but the right of privacy applies generally to public officials.**

There are inherent limitations of a unique and significant nature regarding any claim of the right of privacy on the part of candidates and incumbent public officials,<sup>1</sup> but the right of privacy applies generally to public officials.<sup>2</sup> Thus, while public officials may not have as great a claim to privacy as that ordinarily afforded to private citizens,<sup>3</sup> such officials, by virtue of their official status, do not forgo altogether any privacy claims in matters related to official business and have a legitimate interest in preserving the secrecy of matters that could conceivably subject them to annoyance or harassment in either their official or private lives.<sup>4</sup>

A prospective candidate for public office has no constitutional right of privacy in his home address<sup>5</sup> where his home address is public information in which he could assert no expectation of privacy which society would be willing to recognize as objectively reasonable,<sup>6</sup> and in addition, a compelling governmental interest exists for revealing such information.<sup>7</sup>

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#### Footnotes

- 1 As to the constitutional right of privacy as protecting only a reasonable expectation of privacy, generally, see § 1167.  
**Elected or appointed officials**  
U.S.—*Duplantier v. U.S.*, 606 F.2d 654 (5th Cir. 1979).
- 2 Ohio—*Dayton Newspapers, Inc. v. City of Dayton*, 23 Ohio Misc. 49, 52 Ohio Op. 2d 100, 259 N.E.2d 522 (C.P. 1970), judgment aff'd, 28 Ohio App. 2d 95, 57 Ohio Op. 2d 170, 274 N.E.2d 766 (2d Dist. Montgomery County 1971).  
As to a waiver of the constitutional right of privacy, generally, see § 1165.  
**Forced disclosures not impelled by public need**  
Cal.—*People v. Superior Court (Dean)*, 38 Cal. App. 3d 966, 113 Cal. Rptr. 732 (3d Dist. 1974).
- 3 U.S.—*Lesar v. U.S. Dept. of Justice*, 636 F.2d 472 (D.C. Cir. 1980).  
**Smaller zone of privacy**  
U.S.—*Swope v. Bratton*, 541 F. Supp. 99 (W.D. Ark. 1982).  
**Former President's recordings and materials**  
U.S.—*Nixon v. Administrator of General Services*, 433 U.S. 425, 97 S. Ct. 2777, 53 L. Ed. 2d 867 (1977).
- 4 U.S.—*Lesar v. U.S. Dept. of Justice*, 636 F.2d 472 (D.C. Cir. 1980).
- 5 Pa.—*Marin v. Secretary of Com.*, 41 A.3d 913 (Pa. Commw. Ct. 2012), aff'd, 620 Pa. 56, 66 A.3d 250 (2013).
- 6 Pa.—*Marin v. Secretary of Com.*, 41 A.3d 913 (Pa. Commw. Ct. 2012), aff'd, 620 Pa. 56, 66 A.3d 250 (2013).
- 7 **Qualification for office**  
Pa.—*Marin v. Secretary of Com.*, 41 A.3d 913 (Pa. Commw. Ct. 2012), aff'd, 620 Pa. 56, 66 A.3d 250 (2013).

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## 16B C.J.S. Constitutional Law § 1190

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### c. Candidates; Public Officials and Employees

##### (1) In General

## § 1190. Financial disclosure

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1225, 1252 to 1258

### A.L.R. Library

[Validity and construction of orders and enactments requiring public officers and employees, or candidates for office, to disclose financial condition, interests, or relationships, 22 A.L.R.4th 237](#)

[Payroll records of individual government employees as subject to disclosure to public, 100 A.L.R.3d 699](#)

**There is generally no fundamental right of privacy inherent in the personal financial affairs of public officers, and financial disclosures required of public employees do not deprive them of their constitutionally guaranteed right of privacy.**

There is generally no fundamental right of privacy inherent in the personal financial affairs of public officers,<sup>1</sup> and financial disclosures required of public employees do not deprive them of their constitutionally guaranteed right of privacy.<sup>2</sup> In determining that various statutes or ordinances, executive orders, or rules requiring personal financial disclosure by public officers or employees do not violate the public officers' or employees' right of privacy,<sup>3</sup> some authorities, in applying a balancing test, have determined that the governmental interests furthered by the financial disclosure requirement outweighs its incidental intrusion upon the public officer's or employee's privacy.<sup>4</sup> Pursuant to other authorities, such disclosure is deemed proper on the basis of the existence of a compelling governmental interest<sup>5</sup> of the right of the public to have relevant information concerning public employees,<sup>6</sup> or to insure that public officials and employees act with honesty, integrity, and impartiality in all their dealings, and that their private financial holdings and transactions present no conflict of interest between the public trust and private interest.<sup>7</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Mandatory minimum sentence of 25 years for defendant convicted of attempted second-degree murder for offense committed when he was 17 years old was not an unconstitutional de facto life sentence without parole, where defendant would be in his early forties when released from prison. [U.S.C.A. Const.Amend. 8](#); [West's F.S.A. §§ 777.04\(4\)\(c\), 782.04\(2\)](#). [Abrakata v. State](#), 168 So. 3d 251 (Fla. 1st DCA 2015).

## [END OF SUPPLEMENT]

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### Footnotes

- 1 U.S.—[Plante v. Gonzalez](#), 437 F. Supp. 536 (N.D. Fla. 1977), judgment aff'd, 575 F.2d 1119 (5th Cir. 1978). As to the constitutional right of privacy protecting an individual's interest in the independence in making certain kinds of important decisions, generally, see §§ 1198 et seq.  
**Financial privacy not within autonomy branch of right to privacy**  
U.S.—[Plante v. Gonzalez](#), 575 F.2d 1119 (5th Cir. 1978), and [Thomas v. Gonzalez](#), 580 F.2d 1052 (5th Cir. 1978)
- 2 Ala.—[Gideon v. Alabama State Ethics Commission](#), 379 So. 2d 570 (Ala. 1980).  
Utah—[Redding v. Brady](#), 606 P.2d 1193 (Utah 1980).  
**Interest in avoiding disclosure not protected to same extent as that of other citizens**  
Haw.—[Nakano v. Matayoshi](#), 68 Haw. 140, 706 P.2d 814 (1985).
- 3 Ala.—[Gideon v. Alabama State Ethics Commission](#), 379 So. 2d 570 (Ala. 1980).  
Utah—[Redding v. Brady](#), 606 P.2d 1193 (Utah 1980).
- 4 U.S.—[Duplantier v. U.S.](#), 606 F.2d 654 (5th Cir. 1979); [Plante v. Gonzalez](#), 437 F. Supp. 536 (N.D. Fla. 1977), judgment aff'd, 575 F.2d 1119 (5th Cir. 1978).
- 5 Fla.—[Goldtrap v. Askew](#), 334 So. 2d 20 (Fla. 1976).  
N.Y.—[Evans v. Carey](#), 53 A.D.2d 109, 385 N.Y.S.2d 965 (4th Dep't 1976), order aff'd, 40 N.Y.2d 1008, 391 N.Y.S.2d 393, 359 N.E.2d 983 (1976).  
As to a compelling or overriding governmental interest justifying the restriction of the constitutional right of privacy, generally, see § 1169.  
**Disclosure of identity of source of contributor to campaign improper**  
Mo.—[Labor's Educational and Political Club-Independent v. Danforth](#), 561 S.W.2d 339 (Mo. 1977).



- 6 N.Y.—[Evans v. Carey](#), 53 A.D.2d 109, 385 N.Y.S.2d 965 (4th Dep't 1976), order aff'd, 40 N.Y.2d 1008, 391 N.Y.S.2d 393, 359 N.E.2d 983 (1976).
- 7 Md.—[Montgomery County v. Walsh](#), 274 Md. 502, 336 A.2d 97 (1975).

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## 16B C.J.S. Constitutional Law § 1191

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### c. Candidates; Public Officials and Employees

##### (2) Public Employees

## § 1191. Public employees' right to privacy, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#) 🔑 1225, 1252 to 1258

### Within reason, public employees have the right of privacy.

Public employees have, within reason, the right of privacy.<sup>1</sup> One does not lose his constitutional right to privacy upon accepting public employment,<sup>2</sup> but by accepting public employment, an individual steps away from the category of a purely private citizen<sup>3</sup> and, in that transition, must, of necessity, subordinate his or her private rights to the extent that they may compete or conflict with the superior right of the public to achieve honest and efficient government.<sup>4</sup> A state government may not, however, compel individuals to relinquish their First Amendment rights as a condition to obtaining government employment,<sup>5</sup> and a public employer cannot be a party to violating its employees' rights of privacy.<sup>6</sup>

Under certain circumstances, the disclosure or release by a public employer of particular information pertaining to its employees does not violate the employees' constitutional right of privacy.<sup>7</sup> Thus, while public employees generally have a legitimate expectation of privacy in personal information contained in their personnel records,<sup>8</sup> where a public employer's personnel files are public records subject to disclosure pursuant to a statute governing access to public records, the disclosure of the contents of a public employee's personnel file does not constitute an impermissible invasion of his or her privacy.<sup>9</sup>

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Footnotes

- 1 U.S.—[American Federation of Government Emp., Local 421 v. Schlesinger](#), 443 F. Supp. 431 (D.D.C. 1978).
- 2 Cal.—[Los Angeles Unified School District v. Superior Court](#), 228 Cal. App. 4th 222, 175 Cal. Rptr. 3d 90, 306 Ed. Law Rep. 919 (2d Dist. 2014), review denied, (Nov. 12, 2014).
- 3 Cal.—[Sacramento County Employees' Retirement System v. Superior Court](#), 195 Cal. App. 4th 440, 125 Cal. Rptr. 3d 655 (3d Dist. 2011).
- 4 N.J.—[Lehrhaupt v. Flynn](#), 140 N.J. Super. 250, 356 A.2d 35 (App. Div. 1976), judgment aff'd, 75 N.J. 459, 383 A.2d 428 (1978).  
**Not all First Amendment rights relinquished because of public employment**  
 U.S.—[City of San Diego, Cal. v. Roe](#), 543 U.S. 77, 125 S. Ct. 521, 160 L. Ed. 2d 410 (2004).
- 5 Conn.—[DiMartino v. Richens](#), 263 Conn. 639, 822 A.2d 205 (2003).
- 6 Wash.—[Kallas v. Department of Motor Vehicles](#), 88 Wash. 2d 354, 560 P.2d 709 (1977).  
**Actions designed to suppress rights of public employees prohibited**  
 Miss.—[Harris v. Mississippi Valley State University](#), 873 So. 2d 970, 188 Ed. Law Rep. 562 (Miss. 2004).
- 7 U.S.—[Non-Resident Taxpayers Ass'n v. Municipality of Philadelphia](#), 478 F.2d 456 (3d Cir. 1973).  
**Name and salary**  
 Alaska—[International Ass'n of Fire Fighters, Local 1264 v. Municipality of Anchorage](#), 973 P.2d 1132 (Alaska 1999).  
**Name and address of individual appointed by public official**  
 Mass.—[Cape Cod Times v. Sheriff of Barnstable County](#), 443 Mass. 587, 823 N.E.2d 375 (2005).
- 8 Alaska—[International Ass'n of Fire Fighters, Local 1264 v. Municipality of Anchorage](#), 973 P.2d 1132 (Alaska 1999).
- 9 **Former employee**  
 N.D.—[City of Grand Forks v. Grand Forks Herald, Inc.](#), 307 N.W.2d 572, 27 A.L.R.4th 667 (N.D. 1981).

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## 16B C.J.S. Constitutional Law § 1192

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### c. Candidates; Public Officials and Employees

##### (2) Public Employees

## § 1192. Inquiry into public employees' private information; investigation

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1225, 1252 to 1258

### A.L.R. Library

[Validity and Operation of Pre-employment Drug Testing—State Cases](#), 96 A.L.R.5th 485.

**A public employer generally does not have an unlimited license to inquire into its employees' private lives.**

A public employer generally does not have an unlimited license to inquire into its employees' private lives.<sup>1</sup> Thus, before a public employer can gather data in areas protected by the employee's right of privacy, it must convincingly show a substantial relation

between the information sought and a subject of overriding and compelling governmental interest.<sup>2</sup> A public employee must also have a reasonable expectation of privacy in the information sought,<sup>3</sup> and there is no constitutionally protected privacy interest where the employee has no reasonable expectation of privacy in the information,<sup>4</sup> as where it is a matter of public record.<sup>5</sup>

In the absence of a showing that a public employee's private, off-duty, personal activities have an impact on his or her performance of the job, an inquiry by a public employer into those activities violates the employee's constitutionally protected rights of privacy.<sup>6</sup> To the extent, therefore, that a public employee's private life impacts upon legitimate governmental needs, a public employer has an interest in regulating and, concomitantly, investigating such activities.<sup>7</sup> Public employees may surrender their right of privacy by public display.<sup>8</sup>

#### ***Psychological testing.***

The intrusion on the constitutionally based privacy rights of an applicant for public employment occasioned by a public employer's requirement that applicants undergo psychological testing to determine their ability to withstand the psychological pressures of the job is justified by the public employer's need for a procedure which advances compelling governmental interests as long as such procedure is narrowly drawn to further only those interests.<sup>9</sup>

#### ***Drug testing.***

A public employee may be required to submit to a unsuspecting drug test so long as the testing procedure is reasonably related to the goal of determining illegal drug use.<sup>10</sup>

#### ***Polygraph examinations.***

While, in some jurisdictions, polygraph examinations are deemed to inherently intrude upon the constitutionally protected zone of individual privacy,<sup>11</sup> in other jurisdictions, the legislature has made express provision for their use under certain circumstances.<sup>12</sup>

### **CUMULATIVE SUPPLEMENT**

#### **Cases:**

As is relevant to Sunshine Law's provision that a board may hold a meeting closed to the public to consider the hire, evaluation, dismissal, or discipline of an employee when consideration of matters affecting privacy will be involved, a person cannot claim a legitimate privacy interest in information that has already been made public. [Haw. Rev. Stat. § 92-5\(a\)\(2\)](#). [Civil Beat Law Center for the Public Interest, Inc. v. City and County of Honolulu](#), 144 Haw. 466, 445 P.3d 47 (2019).

The presumptive probation statute, which directed judges to sentence an offender convicted of a class 5 or class 6 felony to probation, unless the offender is convicted under certain enumerated statutes, was not unconstitutional in light of *Apprendi*; when sentencing courts determine facts relevant to probation, the courts were properly administering the criminal justice system rather than encroaching upon facts historically found by the jury. [SDCL § 22–6–11](#). [State v. Anderson](#), 2015 SD 60, 867 N.W.2d 718 (S.D. 2015).

[END OF SUPPLEMENT]

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Footnotes

- 1 U.S.—*Major v. Hampton*, 413 F. Supp. 66 (E.D. La. 1976).
- 2 U.S.—*Sylvester v. Fogley*, 465 F.3d 851 (8th Cir. 2006).  
Cal.—*Sacramento County Employees' Retirement System v. Superior Court*, 195 Cal. App. 4th 440, 125 Cal. Rptr. 3d 655 (3d Dist. 2011).  
Pa.—*Pennsylvania Social Services Union, Local 688 of Service Employees Intern. Union v. Com.*, 59 A.3d 1136 (Pa. Commw. Ct. 2012).  
As to a compelling or overriding governmental interest justifying a restriction of the constitutional right of privacy, generally, see § 1169.
- 3 La.—*Beckett v. Serpas*, 112 So. 3d 348 (La. Ct. App. 4th Cir. 2013).
- 4 Cal.—*Ibarra v. Superior Court*, 217 Cal. App. 4th 695, 158 Cal. Rptr. 3d 751 (2d Dist. 2013), review denied, (Oct. 16, 2013).  
W. Va.—*Watson v. West Virginia Dep't of Health and Human Resources*, 2012 WL 2924123 (W. Va. 2012).  
**Intraoffice emails**  
County employee lacked reasonable expectation of privacy in emails between her and her supervisor, and thus, disclosing the emails to newspaper publisher would not violate federal constitutional right to privacy, even though the emails were highly personal and sensitive or detailed intimate aspects of employee's personal and private life; employee signed county's email policy stating that employees had no right to personal privacy when using the county's email system.  
Idaho—*Cowles Pub. Co. v. Kootenai County Bd. of County Com'rs*, 144 Idaho 259, 159 P.3d 896 (2007).
- 5 U.S.—*Mangum v. Action Collection Service, Inc.*, 575 F.3d 935 (9th Cir. 2009).  
Cal.—*Sacramento County Employees' Retirement System v. Superior Court*, 195 Cal. App. 4th 440, 125 Cal. Rptr. 3d 655 (3d Dist. 2011).  
Mont.—*Barr v. Great Falls Intern. Airport Authority*, 2005 MT 36, 326 Mont. 93, 107 P.3d 471 (2005).
- 6 **Police officer**  
U.S.—*Swope v. Bratton*, 541 F. Supp. 99 (W.D. Ark. 1982).
- 7 U.S.—*Shuman v. City of Philadelphia*, 470 F. Supp. 449 (E.D. Pa. 1979).  
Mont.—*Yellowstone County v. Billings Gazette*, 2006 MT 218, 333 Mont. 390, 143 P.3d 135 (2006).
- 8 U.S.—*Thaeter v. Palm Beach County Sheriff's Office*, 449 F.3d 1342, 64 Fed. R. Serv. 3d 874 (11th Cir. 2006).  
As to a waiver or loss of the constitutional right of privacy, generally, see § 1165.  
**Off-duty celebration**  
Mass.—*Broderick v. Police Commissioner of Boston*, 368 Mass. 33, 330 N.E.2d 199 (1975).
- 9 U.S.—*McKenna v. Fargo*, 451 F. Supp. 1355 (D.N.J. 1978), *aff'd*, 601 F.2d 575 (3d Cir. 1979).
- 10 Cal.—*Loder v. City of Glendale*, 14 Cal. 4th 846, 59 Cal. Rptr. 2d 696, 927 P.2d 1200 (1997).  
Ind.—*Miller v. Vanderburgh County*, 610 N.E.2d 858 (Ind. Ct. App. 1993).  
**Preemployment drug screening**  
Preemployment drug screening which applicant underwent pursuant to his application for employment as security officer for county hospital's substance abuse clinic did not constitute unconstitutional intrusion on his expectation of privacy.  
N.Y.—*Jennings v. Leon*, 31 A.D.3d 762, 820 N.Y.S.2d 83 (2d Dep't 2006).
- 11 Cal.—*Long Beach City Employees Assn. v. City of Long Beach*, 41 Cal. 3d 937, 227 Cal. Rptr. 90, 719 P.2d 660 (1986).
- 12 Wash.—*In re Detention of Hawkins*, 169 Wash. 2d 796, 238 P.3d 1175 (2010).  
**Employment in law enforcement agency**  
Wash.—*O'Hartigan v. Department of Personnel*, 118 Wash. 2d 111, 821 P.2d 44 (1991).

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## 16B C.J.S. Constitutional Law § 1193

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### d. Criminal Matters

## § 1193. Criminal matters affecting right of privacy, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [1218](#), [1225](#), [1274](#), [1275](#)

### A.L.R. Library

[Validity, construction, and application of state statutes authorizing community notification of release of convicted sex offender, 78 A.L.R.5th 489](#)

**The constitutional right of privacy of individuals must generally yield, to some degree, to the public interest in prosecuting criminal conduct and to the compelling governmental interest which exists where the government enforces its criminal laws for the benefit and protection of other fundamental rights of its citizens.**



While persons have a limited right of confidentiality in the nondisclosure of criminal information,<sup>1</sup> the constitutional right of privacy of individuals must generally yield, to some degree, to the public interest in prosecuting criminal conduct<sup>2</sup> and to the compelling governmental interest which exists where the government enforces its criminal laws for the benefit and protection of other fundamental rights of its citizens.<sup>3</sup> Thus, a public interest in effective law enforcement can, in a proper instance, justify certain kinds of warrantless intrusions on an individual's privacy.<sup>4</sup> However, where the constitutional right of privacy is implicated in the context of a criminal investigation, the State's intrusion into the individual's bodily zone of privacy must be reasonable.<sup>5</sup>

The disclosure by police that the plaintiff is suspected of committing a crime before the police have probable cause to arrest him or her for such crime is not a revelation of confidential information and does not violate his or her state constitutional right of privacy.<sup>6</sup> The perpetrator of a public offense generally may not characterize the public consequences of arrest and conviction as an invasion of a constitutionally protected right of privacy.<sup>7</sup> Thus, a suspect's constitutional right of privacy is not violated by the prompt and accurate public reporting of the facts and circumstances of his or her arrest, as such right is outweighed by the necessity of identifying him or her correctly.<sup>8</sup> Additionally, the stigma which results from the publication of the fact that an individual is arrested, even though charges are subsequently dismissed, is not constitutionally protected.<sup>9</sup>

### ***Registration as sexual offender.***

The State's interest in the public disclosure of certain information about a sex offender, as required by a convicted sex offender notification statute, substantially outweighs a sex offender's interest in privacy.<sup>10</sup> Thus, a statutory sentencing condition requiring that defendant register as a sexual offender does not violate defendant's constitutional right to privacy<sup>11</sup> since the State has a compelling interest in requiring defendant to register to protect the public from potential future crimes committed by defendant as well as in assisting law enforcement in investigating those crimes,<sup>12</sup> which interest outweighs any expectation of privacy defendant has in his whereabouts and residential information,<sup>13</sup> and the statute is narrowly tailored to achieve the State's compelling interests without imposing any substantial or excessive hardships on the offender.<sup>14</sup>

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### Footnotes

- 1 Wash.—*In re Meyer*, 142 Wash. 2d 608, 16 P.3d 563 (2001).
- 2 U.S.—*U.S. v. Liddy*, 354 F. Supp. 217 (D.D.C. 1973), *aff'd*, 509 F.2d 428, 28 A.L.R. Fed. 1 (D.C. Cir. 1974).  
Kan.—*State v. Edwards*, 48 Kan. App. 2d 264, 288 P.3d 494, 286 Ed. Law Rep. 719 (2012).
- 3 Mont.—*State v. Solis*, 214 Mont. 310, 693 P.2d 518 (1984).  
Okla.—*Collier v. Reese*, 2009 OK 86, 223 P.3d 966 (Okla. 2009).  
As to a compelling or overriding governmental interest justifying a restriction of the constitutional right of privacy, generally, see § 1169.  
**Control and prosecution of criminal activity requires compelling state interest**  
Fla.—*State v. Johnson*, 814 So. 2d 390 (Fla. 2002).
- 4 Ill.—*People v. Caballes*, 221 Ill. 2d 282, 303 Ill. Dec. 128, 851 N.E.2d 26 (2006).  
Wash.—*State v. McCray*, 15 Wash. App. 810, 551 P.2d 1376 (Div. 1 1976).
- 5 Ill.—*People v. Caballes*, 221 Ill. 2d 282, 303 Ill. Dec. 128, 851 N.E.2d 26 (2006).  
**Search and seizure**  
Right to be free from unreasonable searches and seizures under the constitution is tied into the implicit right to privacy.  
Pa.—*Pennsylvania Social Services Union, Local 688 of Service Employees Intern. Union v. Com.*, 59 A.3d 1136 (Pa. Commw. Ct. 2012).

- 6 Cal.—*Alarcon v. Murphy*, 201 Cal. App. 3d 1, 248 Cal. Rptr. 26 (1st Dist. 1988).
- 7 Cal.—*People v. Ryser*, 40 Cal. App. 3d 1, 114 Cal. Rptr. 668 (3d Dist. 1974).
- No invasion of privacy where arrest supported by probable cause**
- U.S.—*Evans v. Detlefsen*, 857 F.2d 330 (6th Cir. 1988).
- 8 Cal.—*Loder v. Municipal Court*, 17 Cal. 3d 859, 132 Cal. Rptr. 464, 553 P.2d 624 (1976).
- Fingerprinting; photographing**
- Idaho—*Voyles v. City of Nampa*, 97 Idaho 597, 548 P.2d 1217 (1976).
- 9 N.Y.—*Lee T.T. v. Dowling*, 87 N.Y.2d 699, 642 N.Y.S.2d 181, 664 N.E.2d 1243 (1996).
- 10 N.J.—*Doe v. Poritz*, 142 N.J. 1, 662 A.2d 367, 36 A.L.R.5th 711 (1995).
- Ohio—*State v. Williams*, 88 Ohio St. 3d 513, 2000-Ohio-428, 728 N.E.2d 342 (2000).
- Internet registry**
- Mass.—*Coe v. Sex Offender Registry Bd.*, 442 Mass. 250, 812 N.E.2d 913 (2004).
- N.J.—*A.A. v. State*, 384 N.J. Super. 481, 895 A.2d 453 (App. Div. 2006).
- Retroactive application of registration and disclosure requirements**
- Mont.—*State v. Mount*, 2003 MT 275, 317 Mont. 481, 78 P.3d 829 (2003).
- Vital interest**
- A state has a vital interest in protecting citizens from harm which outweighs inconvenience to a sex offender.
- Ky.—*Hyatt v. Com.*, 72 S.W.3d 566 (Ky. 2002).
- 11 Mass.—*Doe v. Sex Offender Registry Bd.*, 470 Mass. 102, 18 N.E.3d 1081 (2014).
- Violent sexual offender**
- Mont.—*State v. Brooks*, 2012 MT 263, 367 Mont. 59, 289 P.3d 105 (2012).
- 12 Mont.—*State v. Brooks*, 2012 MT 263, 367 Mont. 59, 289 P.3d 105 (2012).
- 13 Mass.—*Doe v. Sex Offender Registry Bd.*, 470 Mass. 102, 18 N.E.3d 1081 (2014).
- Mont.—*State v. Brooks*, 2012 MT 263, 367 Mont. 59, 289 P.3d 105 (2012).
- 14 Mont.—*State v. Brooks*, 2012 MT 263, 367 Mont. 59, 289 P.3d 105 (2012).

## 16B C.J.S. Constitutional Law § 1194

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

Francis C. Amendola, J.D.; Joseph Bassano, J.D.; John Bourdeau, J.D.; M. Elaine Buccieri, J.D.; James Buchwalter, J.D.; Michael N. Giuliano, J.D.; Lonnie E. Griffith, Jr., J.D.; Eleanor L. Grossman, J.D., of the staff of the National Legal Research Group, Inc.; Jill Gustafson, J.D.; Glenda K. Harnad, J.D.; Alan J. Jacobs, J.D.; John Kimpflen, J.D.; Amy L. Kruse, J.D.; Stephen Lease, J.D.; Sonja Larsen, J.D.; Robert B. McKinney, J.D., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.; Thomas Muskus, J.D.; Sally J.T. Necheles, J.D., LL.M.; Karl Oakes, J.D. and Eric C. Surette, J.D.

### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### d. Criminal Matters

## § 1194. Effect of information gathering or investigation on right of privacy

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [1218](#), [1225](#), [1227](#), [1228](#), [1274](#), [1275](#)

### A.L.R. Library

[Constitutionality of Secret Video Surveillance](#), 91 A.L.R.5th 585

["Caller ID" system, allowing telephone call recipient to ascertain number of telephone from which call originated, as violation of right to privacy, wiretapping statute, or similar protections](#), 9 A.L.R.5th 553

**In gathering information of and investigating criminal activity, an individual's right to privacy may be violated in certain instances but not in others.**

A legitimate, ongoing criminal investigation generally satisfies the compelling state interest test for the intrusion on the fundamental right of privacy when the State demonstrates a clear connection between the illegal activity and the person whose privacy will be invaded.<sup>1</sup> The practice of private bodies in voluntarily aiding law enforcement officials generally does not implicate the constitutional protections against invasions of privacy,<sup>2</sup> and the use of an informant, therefore, does not violate a person's constitutional right to privacy where such use relates to specific criminal activity.<sup>3</sup>

Eavesdropping generally does not violate an accused's right of privacy<sup>4</sup> though eavesdropping which amounts to a trespass is an invasion of the constitutional right of privacy.<sup>5</sup> In some jurisdictions, where one of the parties to a monitored conversation has consented to the overhearing of that conversation, the nonconsenting party's right to privacy is not violated.<sup>6</sup> Generally, each party to a conversation, telephonic or otherwise, takes the risk that the other party may divulge the contents of that conversation, and where that happens, there is no invasion of the right of privacy.<sup>7</sup> The seizure of the telephone numbers of outgoing and incoming calls without a warrant, however, generally violates the right of privacy<sup>8</sup> though no reasonable expectation of privacy exists in telephone company billing records.<sup>9</sup> Where a privacy interest in wiretap conversations is asserted, the court must consider how the disclosure of information would affect the persons identified and society's interest in the disclosure.<sup>10</sup>

A person's reasonable expectation of privacy is not violated by physical surveillance in public<sup>11</sup> or videotaping of an accused in public.<sup>12</sup>

A dog sniff of a vehicle during a routine traffic stop does not implicate the privacy clause of the state constitution.<sup>13</sup>

There is generally no invasion of privacy in requiring individuals to appear before a grand jury,<sup>14</sup> and ordinarily, a witness has no right of privacy before a grand jury.<sup>15</sup> While information obtained through the investigative efforts of a governmental agency retains its confidential character, in that it cannot be divulged without reason to the public at large, the confidentiality of the materials does not apply among governmental agencies, and the furnishing of such materials to a government official whose statutory duty includes the prosecution of the violation of criminal laws does not violate an individual's constitutional right to privacy.<sup>16</sup>

Confidential informants do not have a reasonable expectation of privacy in shielding their identity from the state attorney's office, the law enforcement agency that would be in charge of the prosecution should the information provided by an informant lead to criminal charges.<sup>17</sup>

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#### Footnotes

- 1 Fla.—*Guardado v. State*, 61 So. 3d 1210 (Fla. 4th DCA 2011).  
As to the necessity of a compelling state interest to intrude upon the right to privacy, generally, see § 1169.  
**Clear connection**  
The state constitutional right to privacy will yield to a compelling state interest, a requirement that is satisfied by an ongoing criminal investigation, when there is a clear connection between illegal activity and the person whose privacy has allegedly been invaded.
- 2 Fla.—*State v. Sun*, 82 So. 3d 866 (Fla. 4th DCA 2011).  
U.S.—*U.S. v. Shuckahosee*, 609 F.2d 1351 (10th Cir. 1979).
- 3 Tex.—*Kane v. State*, 173 S.W.3d 589 (Tex. App. Fort Worth 2005).  
Cal.—*Armenta v. Superior Court*, 61 Cal. App. 3d 584, 132 Cal. Rptr. 586 (2d Dist. 1976).  
Kan.—*State v. Keleher*, 5 Kan. App. 2d 400, 617 P.2d 1265 (1980).  
**Informant wired for sound**

Colo.—*People v. Wolf*, 635 P.2d 213 (Colo. 1981).

Cal.—*People v. Guerra*, 21 Cal. App. 3d 534, 98 Cal. Rptr. 627 (2d Dist. 1971).

Ill.—*People v. Holliman*, 22 Ill. App. 3d 95, 316 N.E.2d 812 (2d Dist. 1974).

Pa.—*Com. v. Murray*, 423 Pa. 37, 223 A.2d 102 (1966).

Ill.—*People v. Gariano*, 366 Ill. App. 3d 379, 304 Ill. Dec. 94, 852 N.E.2d 344 (1st Dist. 2006).

Mont.—*State v. Belgarde*, 244 Mont. 500, 798 P.2d 539 (1990).

U.S.—*Smith v. Cincinnati Post and Times-Star*, 475 F.2d 740, 25 A.L.R. Fed. 755 (6th Cir. 1973).

As to the constitutional right of privacy as protecting only a reasonable expectation of privacy, generally, see § 1167.

**Incriminating speech made to police agent repeated to police officers**

Ill.—*People v. Pascarella*, 92 Ill. App. 3d 413, 48 Ill. Dec. 1, 415 N.E.2d 1285 (3d Dist. 1981).

Haw.—*State v. Rothman*, 70 Haw. 546, 779 P.2d 1 (1989).

**Use of pen register**

Fla.—*Shaktman v. State*, 553 So. 2d 148 (Fla. 1989).

Mont.—*State v. Dolan*, 283 Mont. 245, 940 P.2d 436 (1997).

N.J.—*State v. Ates*, 426 N.J. Super. 521, 46 A.3d 550 (App. Div. 2012), certification granted, 213 N.J. 389, 63 A.3d 228 (2013) and judgment aff'd, 217 N.J. 253, 86 A.3d 710 (2014), cert. denied, 135 S. Ct. 377, 190 L. Ed. 2d 254 (2014).

**Factors considered**

U.S.—*Matter of Search Warrants Issued on June 11, 1988, for the Premises of Three Buildings at Unisys, Inc.*, 710 F. Supp. 701 (D. Minn. 1989).

U.S.—*U.S. v. Enger*, 472 F. Supp. 490 (D.N.J. 1978).

U.S.—*U.S. v. Enger*, 472 F. Supp. 490 (D.N.J. 1978).

**Videotaping motorist's sobriety tests**

Alaska—*Palmer v. State*, 604 P.2d 1106 (Alaska 1979) (holding modified by, *Gundersen v. Municipality of Anchorage*, 792 P.2d 673 (Alaska 1990)).

Ill.—*People v. Caballes*, 221 Ill. 2d 282, 303 Ill. Dec. 128, 851 N.E.2d 26 (2006).

N.Y.—*Application of A and M*, 61 A.D.2d 426, 403 N.Y.S.2d 375, 6 A.L.R.4th 532 (4th Dep't 1978) (rejected by, *U.S. v. Davies*, 768 F.2d 893, 18 Fed. R. Evid. Serv. 353 (7th Cir. 1985)).

Ill.—*People v. McCarty*, 86 Ill. App. 3d 130, 41 Ill. Dec. 473, 407 N.E.2d 971 (1st Dist. 1980).

Cal.—*People v. Park*, 87 Cal. App. 3d 550, 151 Cal. Rptr. 146 (1st Dist. 1978).

Fla.—*City of Riviera Beach v. State*, 82 So. 3d 198 (Fla. 4th DCA 2012).

As to reasonable expectation of privacy, see § 1167.

## 16B C.J.S. Constitutional Law § 1195

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### d. Criminal Matters

## § 1195. Effect of information gathering or investigation on right of privacy—Compulsory testing or examination

[Topic Summary](#) | [References](#) | [Correlation Table](#)

#### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [1218](#), [1225](#), [1227](#), [1228](#), [1274](#), [1275](#)

#### A.L.R. Library

[Validity, and propriety under circumstances, of court-ordered HIV testing](#), 87 A.L.R.5th 631

**A person's right to privacy is not violated by compulsory testing or examination where he or she is accused of, or has been found guilty of, a crime.**

A statute mandating HIV testing of sexual offenders does not violate their right to privacy.<sup>1</sup> Similarly, a statute requiring, upon the victim's request, that a defendant charged with a crime involving the transmission of body fluids from one person to another

to submit to testing for HIV does not violate the defendant's right to privacy.<sup>2</sup> An accused's constitutional right of privacy is also not violated where the accused is, on a showing of probable cause, required to submit to the giving of blood, saliva, and hair samples.<sup>3</sup> Under particular circumstances, the removal from an accused's body of a bullet lodged in his or her body similarly does not violate the accused's right of privacy.<sup>4</sup>

Statutes allowing law enforcement officers engaged in a criminal investigation to request a health care provider to supply test results for the presence of alcohol, drug abuse, or a controlled substance were not unconstitutional as violating defendant's interest in avoiding disclosure of personal matters since there was no significant and inevitable threat of unauthorized disclosure of protected personal information to the general public.<sup>5</sup>

*As a condition of release.*

The imposition of warrantless drug testing and search and seizure conditions to the release of an accused from custody on his or her own recognizance does not violate the accused's right to privacy.<sup>6</sup>

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Footnotes

- 1 [Matter of Juveniles A, B, C, D, E, 121 Wash. 2d 80, 847 P.2d 455 \(1993\).](#)
- 2 [Fla.—Fosman v. State, 664 So. 2d 1163 \(Fla. 4th DCA 1995\).](#)
- 3 [Okla.—Billy v. State, 1979 OK CR 121, 602 P.2d 237 \(Okla. Crim. App. 1979\).](#)  
**Postindictment order requiring taking of physical specimens**  
[Ky.—Holbrook v. Knopf, 847 S.W.2d 52 \(Ky. 1992\).](#)  
[Validity, construction, and effect of state statutes or regulations expressly governing disclosure of fact that person has tested positive for acquired immunodeficiency syndrome \(AIDS\), 12 A.L.R.5th 149.](#)
- 4 [Fla.—Doe v. State, 409 So. 2d 25 \(Fla. 1st DCA 1981\).](#)  
[Ga.—Allison v. State, 129 Ga. App. 364, 199 S.E.2d 587 \(1973\).](#)
- 5 [Ohio—State v. Clark, 2014-Ohio-4873, 23 N.E.3d 218 \(Ohio Ct. App. 3d Dist. Hancock County 2014\);](#)  
[State v. Little, 2014-Ohio-4871, 23 N.E.3d 237 \(Ohio Ct. App. 3d Dist. Auglaize County 2014\).](#)  
[As to disclosure of pharmacy records of controlled substances to police, see § 1187.](#)
- 6 [Cal.—In re York, 9 Cal. 4th 1133, 40 Cal. Rptr. 2d 308, 892 P.2d 804 \(1995\).](#)

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## 16B C.J.S. Constitutional Law § 1196

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### d. Criminal Matters

## § 1196. Maintenance and dissemination of records

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [1218](#), [1225](#), [1227](#) to [1236](#)

**The limited maintenance or retention and dissemination of certain records pertaining to criminal activity does not violate a person's constitutional right of privacy.**

The limited maintenance or retention and dissemination of arrest records does not violate a person's constitutional right of privacy,<sup>1</sup> nor does the mere retention, under proper circumstances, of a person's criminal records.<sup>2</sup> The existence of an arrest warrant is a matter of public record in which person can have no reasonable expectation of privacy.<sup>3</sup> Information contained in a police report concerning allegations of criminal conduct is also not protected by the confidentiality branch of the constitutional right to privacy where there is no reasonable expectation that such information would remain secret.<sup>4</sup>

On the other hand, the right to privacy encompasses a substantial measure of freedom for the individual to choose the extent to which the government can divulge criminal information about him or her, at least, where no conviction has ensued and no



countervailing government interest is demonstrated.<sup>5</sup> Furthermore, the constitutional right of privacy applies to the official dissemination to public employers of arrest records containing nonconviction data.<sup>6</sup>

Under a marijuana reform statute proscribing employers, whether public or private, from seeking from any source whatsoever any records pertaining to minor marijuana convictions sustained by job applicants or employees and requiring the obliteration or destruction of all records pertaining to such convictions, the public disclosure of marijuana-related offenses covered by the statute has been held to violate the individual offender's right of privacy.<sup>7</sup>

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#### Footnotes

- 1 Cal.—*Loder v. Municipal Court*, 17 Cal. 3d 859, 132 Cal. Rptr. 464, 553 P.2d 624 (1976).  
Mont.—*State v. Brooks*, 2012 MT 263, 367 Mont. 59, 289 P.3d 105 (2012).
- 2 **Particular facts**  
U.S.—*U.S. v. Hirsch*, 440 F. Supp. 977 (E.D. N.Y. 1977).  
**No right to privacy in arrest and conviction records**  
Colo.—*People v. D.K.B.*, 843 P.2d 1326 (Colo. 1993).
- 3 Ill.—*People v. Bailey*, 232 Ill. 2d 285, 328 Ill. Dec. 22, 903 N.E.2d 409 (2009).
- 4 U.S.—*Scheetz v. The Morning Call, Inc.*, 946 F.2d 202 (3d Cir. 1991).
- 5 U.S.—*Doe v. Webster*, 606 F.2d 1226 (D.C. Cir. 1979).
- 6 Cal.—*Central Valley Chap. 7th Step Foundation v. Younger*, 95 Cal. App. 3d 212, 157 Cal. Rptr. 117 (1st Dist. 1979).  
**Effect of official policy requiring disclosure or dissemination**  
Cal.—*Hooper v. Deukmejian*, 122 Cal. App. 3d 987, 176 Cal. Rptr. 569 (1st Dist. 1981).
- 7 Cal.—*Starbucks Corp. v. Superior Court*, 194 Cal. App. 4th 820, 123 Cal. Rptr. 3d 719 (4th Dist. 2011).

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## 16B C.J.S. Constitutional Law § 1197

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 2. Avoiding Disclosure of Personal Matters

##### d. Criminal Matters

## § 1197. Persons incarcerated or in custody

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  [1218](#), [1225](#), [1274](#), [1275](#)

### A.L.R. Library

[Prisoner's right to die or refuse medical treatment](#), 66 A.L.R.5th 111

**What society recognizes as a reasonable expectation of privacy is generally restricted when the individual asserting the expectation is incarcerated or in custody.**

Although the fact of a prisoner's incarceration does not, of itself, divest the prisoner of his or her right of privacy<sup>1</sup> and interest in bodily integrity,<sup>2</sup> it does impose limitations on those constitutional rights in terms of the governmental interests unique to the

prison context.<sup>3</sup> Thus, what society recognizes as a reasonable expectation of privacy is restricted when the individual asserting the expectation is incarcerated or in custody.<sup>4</sup>

An incarcerated person has no reasonable expectation of privacy in his conversations while in custody and eavesdropping or recording of inmate conversations by the police has been held not to violate constitutional privacy rights.<sup>5</sup>

A court-ordered mental health examination of a sex offender prior to trial in a sexually violent predator commitment proceeding did not violate the offender's right to privacy in view of the reduced privacy interests of sex offenders.<sup>6</sup>

When an inmate challenges a prison regulation as impinging on the inmate's constitutional rights, the regulation is valid if it is reasonably related to legitimate penological interests.<sup>7</sup> In considering whether force-feeding an inmate who is on a hunger strike, to prevent irreversible damage to his health or his death, impinges on his constitutional rights to free speech and privacy or liberty interests in being free from unwanted medical treatment, the court found a valid, rational connection between permitting the force-feeding of the inmate and the legitimate governmental interest of maintaining safety, security, and the orderly administration of the prison system.<sup>8</sup>

#### ***Presentencing report.***

The release to the sheriff's department of an evaluation conducted as part of a special sex offender disposition alternative to determine a juvenile sex offender's amenability to treatment was rationally related to State's legitimate interest in ensuring that local law enforcement was sufficiently well informed to make accurate assessment of risk posed by juvenile in community and did not violate the juvenile's constitutional right to privacy.<sup>9</sup>

#### ***Probationer.***

A probationer has the right to enjoy a significant degree of privacy or liberty under the Fourth, Fifth, and Fourteenth Amendments to the Federal Constitution.<sup>10</sup>

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#### Footnotes

- 1 Mass.—[Commissioner of Correction v. Myers](#), 379 Mass. 255, 399 N.E.2d 452 (1979).  
**Medical and mental health information**  
U.S.—[Faison v. Parker](#), 823 F. Supp. 1198 (E.D. Pa. 1993).  
**Prisoner not wholly stripped of constitutional protections**  
S.C.—[Al-Shabazz v. State](#), 338 S.C. 354, 527 S.E.2d 742 (2000).
- 2 Conn.—[Commissioner of Correction v. Coleman](#), 303 Conn. 800, 38 A.3d 84 (2012), cert. denied, 133 S. Ct. 1593, 185 L. Ed. 2d 589 (2013).  
Mass.—[Commissioner of Correction v. Myers](#), 379 Mass. 255, 399 N.E.2d 452 (1979).  
As to the constitutional right of privacy preventing unwanted infringement of an individual's bodily integrity, generally, see § 1170.  
**Medical treatment choices**  
Right of privacy guaranteed by state constitution generally extends to an individual's liberty to make medical treatment choices and may do so even when the individual is confined in jail.  
La.—[State v. Marullo](#), 923 So. 2d 638 (La. 2006).  
As to right of privacy in making health and medical care decisions, generally, see § 1199.
- 3 Mass.—[Commissioner of Correction v. Myers](#), 379 Mass. 255, 399 N.E.2d 452 (1979).  
Wash.—[In re Detention of Williams](#), 163 Wash. App. 89, 264 P.3d 570 (Div. 2 2011).

As to the right of privacy applicable to unwarranted governmental interference in private consensual sodomy, generally, see § 1176.

**Need to maintain security**

U.S.—*Cumbey v. Meachum*, 684 F.2d 712 (10th Cir. 1982).

U.S.—*U.S. v. Savage*, 482 F.2d 1371 (9th Cir. 1973).

Wash.—*In re Detention of Williams*, 163 Wash. App. 89, 264 P.3d 570 (Div. 2 2011).

As to the constitutional right of privacy as protecting only a reasonable expectation of privacy, generally, see § 1167.

**Probationer**

Mont.—*State v. Moody*, 2006 MT 305, 334 Mont. 517, 148 P.3d 662 (2006).

**Pretrial detainee**

*State v. Haq*, 166 Wash. App. 221, 268 P.3d 997 (Div. 1 2012), as corrected, (Feb. 24, 2012).

**Collection of blood and saliva specimens to prepare genetic marker groupings**

U.S.—*Vanderlinden v. State of Kan.*, 874 F. Supp. 1210 (D. Kan. 1995), judgment aff'd, 103 F.3d 940 (10th Cir. 1996).

**Prisoner correspondence**

Text of defendant's nonprivileged letter which was written by defendant while he was incarcerated in jail and which was returned to jail was admissible into evidence; defendant had no constitutional right to privacy in his nonprivileged mail.

Pa.—*Com. v. Thompson*, 2007 PA Super 304, 934 A.2d 1281 (2007).

**Jail visit**

Fla.—*Cuomo v. State*, 98 So. 3d 1275 (Fla. 1st DCA 2012), review denied, 118 So. 3d 219 (Fla. 2013).

**Recording phone calls**

Mass.—*Com. v. Boyarsky*, 452 Mass. 700, 897 N.E.2d 574 (2008).

**Conversation with prison doctor**

Cal.—*Faunce v. Cate*, 222 Cal. App. 4th 166, 166 Cal. Rptr. 3d 61 (4th Dist. 2013), review denied, (Mar. 19, 2014).

*In re Detention of Williams*, 163 Wash. App. 89, 264 P.3d 570 (Div. 2 2011).

Kan.—*Roark v. Graves*, 262 Kan. 194, 936 P.2d 245 (1997).

**Test to determine if right impinged**

Iowa—*Risdal v. State*, 573 N.W.2d 261 (Iowa 1998).

Conn.—*Commissioner of Correction v. Coleman*, 303 Conn. 800, 38 A.3d 84 (2012), cert. denied, 133 S. Ct. 1593, 185 L. Ed. 2d 589 (2013).

Wash.—*McNabb v. Department of Corrections*, 127 Wash. App. 854, 112 P.3d 592 (Div. 3 2005), aff'd, 163 Wash. 2d 393, 180 P.3d 1257 (2008).

Wash.—*State v. Sanchez*, 177 Wash. 2d 835, 306 P.3d 935 (2013).

Cal.—*In re James C.*, 165 Cal. App. 4th 1198, 81 Cal. Rptr. 3d 846 (4th Dist. 2008).

## 16B C.J.S. Constitutional Law § 1198

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 3. Independence in Decision-Making

## § 1198. Independence in decision-making as privacy right, generally

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1213 to 1215

**The privacy decisions which are among those that an individual may make without unjustified government interference must be personal decisions that primarily involve a person's self or family, and they must be important decisions that profoundly affect a person's development or life.**

The privacy decisions which are among those that an individual may make without unjustified government interference must be personal decisions that primarily involve a person's self or family, and they must be important decisions that profoundly affect a person's development or life.<sup>1</sup> Three distinct classifications of such protected interests exist,<sup>2</sup> including the right to marry<sup>3</sup> and the right of marital privacy,<sup>4</sup> which extends to physical and emotional intimacies between husbands and wives, the right of family and home privacy, encompassing not only decisions concerning raising children but also choices concerning family living arrangements,<sup>5</sup> and the right of individual privacy, which encompasses decisions concerning the integrity and autonomy of a person's body.<sup>6</sup>

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Footnotes

- 1 U.S.—*Andrews v. Ballard*, 498 F. Supp. 1038 (S.D. Tex. 1980).  
 Ill.—*State Journal-Register v. University of Illinois Springfield*, 373 Ill. Dec. 936, 994 N.E.2d 705, 297 Ed. Law Rep. 468 (App. Ct. 4th Dist. 2013).  
 Miss.—*In re Brown*, 478 So. 2d 1033 (Miss. 1985).  
 As to the constitutional right of privacy with respect to an incompetent's health and medical decisions, generally, see § 1199.
- 2 U.S.—*Johnson v. San Jacinto Jr. College*, 498 F. Supp. 555 (S.D. Tex. 1980).
- 3 Cal.—*Suleman v. Superior Court*, 180 Cal. App. 4th 1287, 103 Cal. Rptr. 3d 651 (4th Dist. 2010).  
 Mass.—*Goodridge v. Department of Public Health*, 440 Mass. 309, 798 N.E.2d 941 (2003).  
**Fundamental right**  
 The constitutional right to marry is an aspect of the fundamental substantive liberty protected by the due process and privacy guarantees of the Federal Constitution.  
 Cal.—*In re Marriage Cases*, 43 Cal. 4th 757, 76 Cal. Rptr. 3d 683, 183 P.3d 384 (2008).  
 U.S.—*Wilson v. Collins*, 517 F.3d 421 (6th Cir. 2008).  
 Haw.—*Doe v. Doe*, 116 Haw. 323, 172 P.3d 1067 (2007).  
 Ill.—*State Journal-Register v. University of Illinois Springfield*, 373 Ill. Dec. 936, 994 N.E.2d 705, 297 Ed. Law Rep. 468 (App. Ct. 4th Dist. 2013).  
 Tex.—*In re Crestcare Nursing and Rehabilitation Center*, 222 S.W.3d 68 (Tex. App. Tyler 2006).  
**Personal decisions involving marriage**  
 Ill.—*People v. Malchow*, 193 Ill. 2d 413, 250 Ill. Dec. 670, 739 N.E.2d 433 (2000).
- 5 U.S.—*Wilson v. Collins*, 517 F.3d 421 (6th Cir. 2008).  
 Cal.—*Suleman v. Superior Court*, 180 Cal. App. 4th 1287, 103 Cal. Rptr. 3d 651 (4th Dist. 2010).  
 Fla.—*Tallahassee Memorial Regional Medical Center, Inc. v. Petersen*, 920 So. 2d 75 (Fla. 1st DCA 2006).  
 Haw.—*Doe v. Doe*, 116 Haw. 323, 172 P.3d 1067 (2007).  
 Ill.—*State Journal-Register v. University of Illinois Springfield*, 373 Ill. Dec. 936, 994 N.E.2d 705, 297 Ed. Law Rep. 468 (App. Ct. 4th Dist. 2013).  
 As to the right to privacy in an individual's home and family matters, generally, see §§ 1178 et seq.  
**Decisions involving family relationships**  
 Ill.—*People v. Malchow*, 193 Ill. 2d 413, 250 Ill. Dec. 670, 739 N.E.2d 433 (2000).
- 6 U.S.—*Johnson v. San Jacinto Jr. College*, 498 F. Supp. 555 (S.D. Tex. 1980).  
 As to the right of privacy with regard to an individual's body and bodily functions, generally, see § 1170.  
 As to the right of privacy protecting the making of decisions vital to health and medical care, generally, see § 1199.

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## 16B C.J.S. Constitutional Law § 1199

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 3. Independence in Decision-Making

## § 1199. Health and medical care decisions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1213, 1268 to 1272

### A.L.R. Library

[Judicial power to order discontinuance of life-sustaining treatment](#), 48 A.L.R.4th 67.

**The constitutional right of personal privacy protects the making of decisions vital to health care and extends to protect an individual's decision regarding what he or she will or will not ingest into his or her body.**

The constitutional right of personal privacy protects the making of decisions vital to health care<sup>1</sup> and extends to protect an individual's decision regarding what he or she will or will not ingest into his or her body.<sup>2</sup>

The right to make decisions about medical treatments for oneself or one's children has been held to be a fundamental privacy right,<sup>3</sup> however, it is not absolute.<sup>4</sup> The right to privacy pursuant to a state constitution does not encompass a right of access to drugs of unproven efficacy.<sup>5</sup>

A decision to obtain or reject medical treatment is one which profoundly affects a person's development or life, and it is a constitutional right encompassed by the right of privacy.<sup>6</sup> The privacy interest in making a decision to obtain or reject medical treatment extends to the right to refuse medical treatment to sustain a person's life.<sup>7</sup> An individual's right to be free from pain is inseparable from his or her right to refuse medical treatment.<sup>8</sup> The federal constitutional right to refuse medical treatment is, however, more properly analyzed in terms of a Fourteenth Amendment liberty interest than as being encompassed by a generalized constitutional right of privacy.<sup>9</sup> There is no basis for demanding strict scrutiny for every government measure involving interference with the body.<sup>10</sup>

The prerogative of patients to contract with health care providers regarding the terms of their medical care without third party interference is a right of constitutional dimension encompassed by the right to privacy.<sup>11</sup>

#### ***Decisions for incompetent person.***

An incompetent person may properly exercise his or her or her constitutional right of privacy with respect to decisions concerning medical treatment<sup>12</sup> by the substituted judgment of another acting on his or her or her behalf.<sup>13</sup>

#### ***Overriding incompetent patient's choice not to receive treatment.***

Even if a governmental interest is sufficiently compelling to override an incompetent patient's choice not to receive certain medical treatment, the court must order only the least intrusive form of treatment,<sup>14</sup> and the governmental interest weakens, and the individual's right to privacy grows, as the degree of bodily invasion increases.<sup>15</sup>

### **CUMULATIVE SUPPLEMENT**

#### **Cases:**

Right to health care guaranteed by the Montana Constitution is the fundamental privacy right to obtain a particular lawful medical procedure from a health care provider who has been determined by the medical community to be competent to provide that service and who has been licensed to do so. [Mont. Const. art. 2, § 10](#). [Weems v. State by and through Fox, 2019 MT 98, 440 P.3d 4 \(Mont. 2019\)](#).

### **[END OF SUPPLEMENT]**

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#### **Footnotes**

- 1 U.S.—[Pharmaceutical Soc. of State of New York, Inc. v. Lefkowitz, 454 F. Supp. 1175 \(S.D. N.Y. 1978\)](#), [aff'd, 586 F.2d 953 \(2d Cir. 1978\)](#).  
Alaska—[Huffman v. State, 204 P.3d 339, 243 Ed. Law Rep. 461 \(Alaska 2009\)](#).  
**Prisoner**



Right of privacy guaranteed by state constitution generally extends to an individual's liberty to make medical treatment choices and may do so even when the individual is confined in jail.

La.—[State v. Marullo](#), 923 So. 2d 638 (La. 2006).

As to rights of prisoners, generally, see § 1197.

2 N.J.—[New Jersey Division of Youth and Family Services v. L.V.](#), 382 N.J. Super. 582, 889 A.2d 1153 (Ch. Div. 2005).

As to the constitutional right of personal privacy protecting an individual's interest in freedom from nonconsensual invasion of bodily integrity, generally, see § 1170.

#### **Execution**

The State may not forcibly medicate an inmate solely to facilitate execution, as an inmate has a right, grounded in the state constitutional right to privacy and the Due Process Clause to be free from unwanted medical intrusions; the State may forcibly medicate an inmate only when he is dangerous to himself or others and then only when it is in the inmate's best medical interest.

S.C.—[Hughes v. State](#), 367 S.C. 389, 626 S.E.2d 805 (2006).

#### **Antipsychotic drugs**

Cal.—[People v. McDuffie](#), 144 Cal. App. 4th 880, 50 Cal. Rptr. 3d 794 (1st Dist. 2006).

3 Alaska—[Huffman v. State](#), 204 P.3d 339, 243 Ed. Law Rep. 461 (Alaska 2009).

Mont.—[Wiser v. State](#), Dept. of Commerce, 2006 MT 20, 331 Mont. 28, 129 P.3d 133 (2006).

#### **Compelling state interest**

A patient's fundamental constitutional right to refuse medical intervention can only be overcome if the State has a compelling state interest great enough to override this constitutional right.

Fla.—[Burton v. State](#), 49 So. 3d 263 (Fla. 1st DCA 2010).

4 **Balanced against governmental interest**

Alaska—[In re Merrill](#), 305 P.3d 288 (Alaska 2013), cert. denied, 134 S. Ct. 910, 187 L. Ed. 2d 779 (2014).

#### **Not universally applicable**

The right to privacy is a fundamental right guaranteed by the Montana Constitution; however, it does not necessarily follow from the existence of the right to privacy that every restriction on medical care impermissibly infringes that right.

Mont.—[Wiser v. State](#), Dept. of Commerce, 2006 MT 20, 331 Mont. 28, 129 P.3d 133 (2006).

5 U.S.—[Turner v. California](#), 444 U.S. 949, 100 S. Ct. 420, 62 L. Ed. 2d 318 (1979).

#### **Medical marijuana**

Medical Marijuana Act denying providers of medical marijuana products compensation and limiting the number of registered cardholders that each provider could serve did not implicate fundamental right to privacy under Montana Constitution; cardholders did not have constitutional right to medical marijuana especially when it was still unequivocally illegal under Controlled Substances Act.

Mont.—[Montana Cannabis Industry Ass'n v. State](#), 2012 MT 201, 366 Mont. 224, 286 P.3d 1161 (2012).

6 Cal.—[Scott S. v. Superior Court](#), 204 Cal. App. 4th 326, 138 Cal. Rptr. 3d 730 (4th Dist. 2012).

Wash.—[Butler v. Kato](#), 137 Wash. App. 515, 154 P.3d 259 (Div. 1 2007).

#### **Involuntary commitment**

Involuntary commitment implicates state's constitutional guarantees of individual liberty and privacy and therefore entitles alleged mentally ill individual to due process protections.

Alaska—[Wetherhorn v. Alaska Psychiatric Institute](#), 156 P.3d 371 (Alaska 2007).

7 Cal.—[Conservatorship of Wendland](#), 26 Cal. 4th 519, 110 Cal. Rptr. 2d 412, 28 P.3d 151 (2001).

N.J.—[In re J.M.](#), 416 N.J. Super. 222, 3 A.3d 651 (Ch. Div. 2010).

#### **Balanced against state interest**

The State's interest in the preservation of life may permit the State to compel a patient to accept life-sustaining treatment; however, if the patient's condition is hopeless and there is no reasonable possibility of returning to a cognitive, sapient state, the patient's right of privacy outweighs the State's interest in preserving life.

Wash.—[Stewart-Graves v. Vaughn](#), 162 Wash. 2d 115, 170 P.3d 1151 (2007).

8 **Sedative when ventilator disconnected**

Ga.—[State v. McAfee](#), 259 Ga. 579, 385 S.E.2d 651 (1989).

9 U.S.—[Cruzan by Cruzan v. Director, Missouri Dept. of Health](#), 497 U.S. 261, 110 S. Ct. 2841, 111 L. Ed. 2d 224 (1990).

§ 2122.

- 10 U.S.—*New York State Ophthalmological Soc. v. Bowen*, 854 F.2d 1379 (D.C. Cir. 1988).  
11 Cal.—*Ruiz v. Podolsky*, 50 Cal. 4th 838, 114 Cal. Rptr. 3d 263, 237 P.3d 584 (2010).  
12 **Right to privacy not eliminated by commitment to mental health institution**  
Minn.—*Jarvis v. Levine*, 418 N.W.2d 139, 74 A.L.R.4th 1079 (Minn. 1988).  
13 Del.—*In re Severns*, 425 A.2d 156 (Del. Ch. 1980).  
Wash.—*Stewart-Graves v. Vaughn*, 162 Wash. 2d 115, 170 P.3d 1151 (2007).  
14 Alaska—*Bigley v. Alaska Psychiatric Institute*, 208 P.3d 168 (Alaska 2009).  
D.C.—*In re Boyd*, 403 A.2d 744 (D.C. 1979).  
As to a compelling or overriding governmental interest justifying a restriction of the constitutional right of  
privacy, generally, see § 1169.  
15 Del.—*In re Severns*, 425 A.2d 156 (Del. Ch. 1980).

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## 16B C.J.S. Constitutional Law § 1200

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 3. Independence in Decision-Making

## § 1200. Child rearing and education decisions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1226, 1247 to 1250, 1262 to 1266

**An individual generally has a constitutionally protected privacy interest in making certain kinds of important decisions and engaging in certain kinds of conduct, such as child rearing and education.**

An individual generally has a constitutionally protected privacy interest in making certain kinds of important decisions and engaging in certain kinds of conduct, such as child rearing and education.<sup>1</sup> Thus, parents of a child,<sup>2</sup> whether such parents are married or unmarried,<sup>3</sup> have a fundamental,<sup>4</sup> basic, and constitutional right<sup>5</sup> to raise, care for, and control their own children.<sup>6</sup> Aspects of child rearing protected from unnecessary intrusion by the government include the inculcation of moral standards, religious beliefs, and elements of good citizenship.<sup>7</sup>

While parents have a constitutional right to send their children to private schools and a constitutional right to select private schools that offer specialized instruction, they have no constitutional right to provide their children with a private school education unfettered by reasonable government regulation.<sup>8</sup> Similarly, a parents' right to privacy is not violated, on the basis that the government uses an unnecessarily broad means to further its interests in the health and education of its children, where students can be excused from all or any part of a noncompulsory programs of sex education.<sup>9</sup> Particular statutes also do not

infringe upon a person's right of privacy with respect to his or her interest in the independence to make decisions involving child rearing and education.<sup>10</sup>

While parents have a right to privacy in matters related to child rearing and family relationships,<sup>11</sup> such right is not absolute.<sup>12</sup> The State may not, however, intrude upon parents' fundamental right to raise their children except in instances where the child is threatened with harm.<sup>13</sup> The test employed when balancing a parent's fundamental right to raise his or her children against the State's compelling interest in the welfare of those children is strict scrutiny.<sup>14</sup> If a compelling state interest is established, it is then necessary for the State to prove that the method sought to achieve such interest is the least intrusive of those methods by which the State's interest can be fulfilled.<sup>15</sup>

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#### Footnotes

- 1 U.S.—*Wilson v. Collins*, 517 F.3d 421 (6th Cir. 2008).  
Fla.—*D.M.T. v. T.M.H.*, 129 So. 3d 320 (Fla. 2013).  
Haw.—*Doe v. Doe*, 116 Haw. 323, 172 P.3d 1067 (2007).  
Ill.—*State Journal-Register v. University of Illinois Springfield*, 373 Ill. Dec. 936, 994 N.E.2d 705, 297 Ed. Law Rep. 468 (App. Ct. 4th Dist. 2013).  
Okla.—*Craig v. Craig*, 2011 OK 27, 253 P.3d 57 (Okla. 2011).  
Tex.—*In re Crestcare Nursing and Rehabilitation Center*, 222 S.W.3d 68 (Tex. App. Tyler 2006).  
**Right to privacy applicable to personal decisions involving child rearing and education**  
Del.—*Helman v. State*, 784 A.2d 1058 (Del. 2001).
- 2 Fla.—*D.M.T. v. T.M.H.*, 129 So. 3d 320 (Fla. 2013).  
N.J.—*Tortorice v. Vanartsdalen*, 422 N.J. Super. 242, 27 A.3d 1247 (App. Div. 2011).
- 3 Tenn.—*In re D.A.H.*, 142 S.W.3d 267 (Tenn. 2004).
- 4 Fla.—*D.M.T. v. T.M.H.*, 129 So. 3d 320 (Fla. 2013).  
La.—*Stracener v. Joubert*, 924 So. 2d 430 (La. Ct. App. 3d Cir. 2006).  
Md.—*In re Billy W.*, 386 Md. 675, 874 A.2d 423 (2005).  
N.J.—*Fawzy v. Fawzy*, 199 N.J. 456, 973 A.2d 347 (2009).  
N.D.—*In re W.E.*, 2000 ND 208, 619 N.W.2d 494 (N.D. 2000).  
Wash.—*In re Welfare of R.H.*, 176 Wash. App. 419, 309 P.3d 620 (Div. 2 2013).
- 5 **Right of constitutional dimension**  
Haw.—*In re Doe*, 99 Haw. 522, 57 P.3d 447 (2002).
- 6 Fla.—*Tallahassee Memorial Regional Medical Center, Inc. v. Petersen*, 920 So. 2d 75 (Fla. 1st DCA 2006).  
Ky.—*Vinson v. Sorrell*, 136 S.W.3d 465 (Ky. 2004).  
La.—*Stracener v. Joubert*, 924 So. 2d 430 (La. Ct. App. 3d Cir. 2006).  
N.J.—*Tortorice v. Vanartsdalen*, 422 N.J. Super. 242, 27 A.3d 1247 (App. Div. 2011).  
**Right derived from the notion of privacy**  
N.J.—*V.C. v. M.J.B.*, 163 N.J. 200, 748 A.2d 539, 80 A.L.R.5th 663 (2000).  
**Corporal punishment**  
A parent's right to corporally punish his or her child is derived from the constitutional right to privacy; this right encompasses the right to care for, control, and discipline one's own children which extends to reasonable corporal punishment.  
Ill.—*People v. Green*, 2011 IL App (2d) 91123, 354 Ill. Dec. 440, 957 N.E.2d 1233 (App. Ct. 2d Dist. 2011).  
**Right fiercely guarded**  
Ga.—*Clark v. Wade*, 273 Ga. 587, 544 S.E.2d 99 (2001).
- 7 Mass.—*Curtis v. School Committee of Falmouth*, 420 Mass. 749, 652 N.E.2d 580, 101 Ed. Law Rep. 1047, 52 A.L.R.5th 887 (1995).
- 8 U.S.—*Runyon v. McCrary*, 427 U.S. 160, 96 S. Ct. 2586, 49 L. Ed. 2d 415 (1976).
- 9 Cal.—*Citizens for Parental Rights v. San Mateo County Bd. of Education*, 51 Cal. App. 3d 1, 124 Cal. Rptr. 68, 82 A.L.R.3d 544 (1st Dist. 1975).

- 10 Ala.—*Jernigan v. State*, 412 So. 2d 1242 (Ala. Crim. App. 1982).  
**Grandparent visitation**  
La.—*Rogers v. Pastureau*, 117 So. 3d 517 (La. Ct. App. 1st Cir. 2013), writ denied, 120 So. 3d 247 (La. 2013).  
**Restrictions in child custody order**  
Pa.—*Morris v. Morris*, 271 Pa. Super. 19, 412 A.2d 139 (1979).
- 11 Ill.—*People v. Beard*, 366 Ill. App. 3d 197, 303 Ill. Dec. 243, 851 N.E.2d 141 (1st Dist. 2006).  
**Right of grandparent visitation**  
Ga.—*Brooks v. Parkerson*, 265 Ga. 189, 454 S.E.2d 769 (1995).
- 12 Colo.—*People v. Shepard*, 983 P.2d 1 (Colo. 1999).  
Fla.—*Moore v. Pattin*, 983 So. 2d 663 (Fla. 4th DCA 2008).  
Tenn.—*In re Angela E.*, 303 S.W.3d 240 (Tenn. 2010).
- 13 Fla.—*D.M.T. v. T.M.H.*, 129 So. 3d 320 (Fla. 2013).  
N.J.—*Johnson v. Johnson*, 204 N.J. 529, 9 A.3d 1003 (2010).  
Tenn.—*In re Angela E.*, 303 S.W.3d 240 (Tenn. 2010).  
Wash.—*In re Welfare of C.S.*, 168 Wash. 2d 51, 225 P.3d 953 (2010).
- 14 Wyo.—*In re JL*, 989 P.2d 1268 (Wyo. 1999).
- 15 Wyo.—*In re JL*, 989 P.2d 1268 (Wyo. 1999).

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## 16B C.J.S. Constitutional Law § 1201

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 3. Independence in Decision-Making

## § 1201. Procreation decisions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1094, 1237 to 1240

**The right and power of a man or woman to determine whether or not to participate in the process of procreation is a private and personal one with which the law cannot, and must not, interfere, and the choice not to procreate as part of a person's right to privacy is, subject to certain limitations, a constitutional guaranty.**

The choice of whether or not to procreate, as part of a person's right to privacy, is, subject to certain limitations, a constitutional guaranty.<sup>1</sup> Thus, the right and power of a man or woman to determine whether or not to participate in the process of procreation is a private and personal one with which the law cannot and must not interfere.<sup>2</sup>

The constitutionally protected right of privacy extends to an individual's liberty to make choices regarding contraception<sup>3</sup> and encompasses decisions as to whether and what methods of contraception will be used by an individual to prevent conception.<sup>4</sup> Accordingly, the constitutional right of privacy prevents the government from intruding, without justification, into the decision of adults as to whether to obtain and use contraceptive devices.<sup>5</sup> Government regulations that burden an individual's right to decide to prevent conception may be justified only by a compelling governmental interest<sup>6</sup> and must be narrowly drawn to

express only the legitimate governmental interests at stake.<sup>7</sup> As with adults, a minor's constitutionally protected right of privacy includes the right to obtain contraceptives.<sup>8</sup>

### *Right of privacy of surrogate.*

A woman who entered into a gestational surrogacy arrangement does not have any right to privacy requiring recognition and protection of her status as a "birth mother."<sup>9</sup>

### *Minors.*

A minor consulting with a health care professional in an effort to seek treatment for a reproductive health condition related to sexual activity has a legitimate expectation of privacy as to that information for purposes of federal constitutional right of privacy.<sup>10</sup>

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#### Footnotes

- 1 Del.—*Helman v. State*, 784 A.2d 1058 (Del. 2001).  
Haw.—*Doe v. Doe*, 116 Haw. 323, 172 P.3d 1067 (2007).  
Ill.—*State Journal-Register v. University of Illinois Springfield*, 373 Ill. Dec. 936, 994 N.E.2d 705, 297 Ed. Law Rep. 468 (App. Ct. 4th Dist. 2013).  
N.J.—*Lewis v. Harris*, 378 N.J. Super. 168, 875 A.2d 259 (App. Div. 2005), judgment aff'd as modified on other grounds, 188 N.J. 415, 908 A.2d 196 (2006).  
Tex.—*In re Crestcare Nursing and Rehabilitation Center*, 222 S.W.3d 68 (Tex. App. Tyler 2006).  
**Right to procreate fundamental**  
Ohio—*State v. Talty*, 103 Ohio St. 3d 177, 2004-Ohio-4888, 814 N.E.2d 1201 (2004).
- 2 U.S.—*Steinberg v. Brown*, 321 F. Supp. 741, 26 Ohio Misc. 77, 55 Ohio Op. 2d 98, 55 Ohio Op. 2d 181 (N.D. Ohio 1970).  
**Right extends to minors, as well as adults**  
U.S.—*Carey v. Population Services, Intern.*, 431 U.S. 678, 97 S. Ct. 2010, 52 L. Ed. 2d 675 (1977).
- 3 U.S.—*Carey v. Population Services, Intern.*, 431 U.S. 678, 97 S. Ct. 2010, 52 L. Ed. 2d 675 (1977).  
Haw.—*Doe v. Doe*, 116 Haw. 323, 172 P.3d 1067 (2007).  
Ill.—*State Journal-Register v. University of Illinois Springfield*, 373 Ill. Dec. 936, 994 N.E.2d 705, 297 Ed. Law Rep. 468 (App. Ct. 4th Dist. 2013).  
Tex.—*In re Crestcare Nursing and Rehabilitation Center*, 222 S.W.3d 68 (Tex. App. Tyler 2006).
- 4 U.S.—*Associated Students for University of California at Riverside v. Attorney General of U. S.*, 368 F. Supp. 11 (C.D. Cal. 1973).
- 5 U.S.—*T H v. Jones*, 425 F. Supp. 873 (D. Utah 1975), judgment aff'd in part, 425 U.S. 986, 96 S. Ct. 2195, 48 L. Ed. 2d 811 (1976).  
**Not automatic invalidation**  
Extension of constitutionally protected right of privacy to individual's liberty to make choices regarding contraception does not automatically invalidate every state regulation in area, but rather, business of manufacturing and selling contraceptives may be regulated in ways that do not infringe protected individual choices and even a burdensome regulation may be validated by sufficiently compelling interest.  
U.S.—*Carey v. Population Services, Intern.*, 431 U.S. 678, 97 S. Ct. 2010, 52 L. Ed. 2d 675 (1977).
- 6 U.S.—*Carey v. Population Services, Intern.*, 431 U.S. 678, 97 S. Ct. 2010, 52 L. Ed. 2d 675 (1977).  
Minn.—*Women of State of Minn. by Doe v. Gomez*, 542 N.W.2d 17 (Minn. 1995).
- 7 U.S.—*Carey v. Population Services, Intern.*, 431 U.S. 678, 97 S. Ct. 2010, 52 L. Ed. 2d 675 (1977).
- 8 U.S.—*Doe v. Irwin*, 615 F.2d 1162 (6th Cir. 1980).  
**Assessing constitutionality of restrictions**

U.S.—*T H v. Jones*, 425 F. Supp. 873 (D. Utah 1975), judgment aff'd in part, 425 U.S. 986, 96 S. Ct. 2195, 48 L. Ed. 2d 811 (1976).

9 Cal.—*Johnson v. Calvert*, 5 Cal. 4th 84, 19 Cal. Rptr. 2d 494, 851 P.2d 776 (1993).

10 Ind.—*Planned Parenthood of Indiana v. Carter*, 854 N.E.2d 853 (Ind. Ct. App. 2006).

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## 16B C.J.S. Constitutional Law § 1202

Corpus Juris Secundum | June 2021 Update

### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 3. Independence in Decision-Making

## § 1202. Abortion decisions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1094, 1237 to 1240

### A.L.R. Library

[Validity Of State Statutes And Regulations Limiting or Restricting Public Funding for Abortions Sought By Indigent Women, 118 A.L.R.5th 463](#)

[Validity, construction, and application of statutory restrictions on partial birth abortions, 76 A.L.R.5th 637](#)

**The constitutional right of privacy is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.**

The constitutional right of privacy is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.<sup>1</sup>  
A woman's right to choose to have an abortion before fetal viability and to obtain it without undue interference or undue burden

from the State is, therefore, constitutionally protected.<sup>2</sup> There is nothing, however, in the Federal Constitution requiring states to enter or remain in the business of performing abortions, nor do private physicians and their patients have a constitutional right of access to public facilities for the performance of abortions.<sup>3</sup>

The right of personal privacy with respect to the abortion decision is not absolute or unqualified and must be considered against important governmental interests in regulation.<sup>4</sup> Thus, regulations which limit a woman's privacy rights in making the abortion decision must be justified by a compelling governmental interest and must be narrowly drawn to express only the legitimate governmental interest at stake.<sup>5</sup> At some point in a pregnancy, the governmental interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision.<sup>6</sup>

Various statutes or regulations do not infringe upon a person's right of privacy in regard to the interest in independence in making decisions as to abortion<sup>7</sup> while other do infringe upon such decisions.<sup>8</sup>

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## Footnotes

- 1 U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) (holding modified on other grounds by, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)); *Isaacson v. Horne*, 716 F.3d 1213 (9th Cir. 2013), cert. denied, 134 S. Ct. 905, 187 L. Ed. 2d 778 (2014).  
Ohio—*Roe v. Planned Parenthood Southwest Ohio Region*, 173 Ohio App. 3d 414, 2007-Ohio-4318, 878 N.E.2d 1061 (1st Dist. Hamilton County 2007), aff'd on other grounds, 122 Ohio St. 3d 399, 2009-Ohio-2973, 912 N.E.2d 61 (2009).  
**Fundamental right**  
Alaska—*Valley Hosp. Ass'n, Inc. v. Mat-Su Coalition for Choice*, 948 P.2d 963 (Alaska 1997).  
**Implied right to chose**  
Miss.—*Pro-Choice Mississippi v. Fordice*, 716 So. 2d 645 (Miss. 1998).  
**Personal right**  
Fla.—*Jones v. Smith*, 278 So. 2d 339 (Fla. 4th DCA 1973).  
**Interference by spouse**  
U.S.—*Ruby v. Massey*, 452 F. Supp. 361 (D. Conn. 1978).
- 2 U.S.—*Isaacson v. Horne*, 716 F.3d 1213 (9th Cir. 2013), cert. denied, 134 S. Ct. 905, 187 L. Ed. 2d 778 (2014).  
Kan.—*Tiller v. Corrigan*, 286 Kan. 30, 182 P.3d 719 (2008).  
**Grounded in privacy and protected by due process**  
U.S.—*Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992).  
Mont.—*Armstrong v. State*, 1999 MT 261, 296 Mont. 361, 989 P.2d 364 (1999).  
**Undue burden standard defined**  
Miss.—*Pro-Choice Mississippi v. Fordice*, 716 So. 2d 645 (Miss. 1998).
- 3 U.S.—*Webster v. Reproductive Health Services*, 492 U.S. 490, 109 S. Ct. 3040, 106 L. Ed. 2d 410 (1989).  
**No entitlement to financial resources to choose abortion**  
Fla.—*Renee B. v. Florida Agency for Health Care Admin.*, 790 So. 2d 1036 (Fla. 2001).
- 4 U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) (holding modified on other grounds by, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)).  
Kan.—*Tiller v. Corrigan*, 286 Kan. 30, 182 P.3d 719 (2008).  
Utah—*H L v. Matheson*, 604 P.2d 907 (Utah 1979), judgment aff'd, 450 U.S. 398, 101 S. Ct. 1164, 67 L. Ed. 2d 388 (1981).  
**Balancing interests**

The right to procure an abortion is not without some limitations, and individual interests must be balanced against state interests.

U.S.—*Poe v. Menghini*, 339 F. Supp. 986, 16 Fed. R. Serv. 2d 1020 (D. Kan. 1972).

5 U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) (holding modified on other grounds by, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)).

Alaska—*Valley Hosp. Ass'n, Inc. v. Mat-Su Coalition for Choice*, 948 P.2d 963 (Alaska 1997).

6 U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) (holding modified on other grounds by, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)).

**Maternal or fetal health**

R.I.—*Constitutional Right to Life Committee v. Cannon*, 117 R.I. 52, 363 A.2d 215 (1976).

7 U.S.—*Rust v. Sullivan*, 500 U.S. 173, 111 S. Ct. 1759, 114 L. Ed. 2d 233 (1991); *Taylor v. Hill*, 420 F. Supp. 1020 (W.D. N.C. 1976), judgment aff'd, 430 U.S. 961, 97 S. Ct. 1639, 52 L. Ed. 2d 352 (1977).

Utah—*H L v. Matheson*, 604 P.2d 907 (Utah 1979), judgment aff'd, 450 U.S. 398, 101 S. Ct. 1164, 67 L. Ed. 2d 388 (1981).

**Informed consent**

Ind.—*Clinic for Women, Inc. v. Brizzi*, 837 N.E.2d 973 (Ind. 2005).

**Waiting period**

Mo.—*Reproductive Health Services of Planned Parenthood of St. Louis Region, Inc. v. Nixon*, 185 S.W.3d 685 (Mo. 2006).

8 U.S.—*Roe v. Wade*, 410 U.S. 113, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973) (holding modified on other grounds by, *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)).

N.Y.—*State v. Jacobus*, 75 Misc. 2d 840, 348 N.Y.S.2d 907 (Sup 1973).

**Regulation of facilities and physicians**

U.S.—*Mobile Women's Medical Clinic, Inc. v. Board of Com'rs of City of Mobile*, 426 F. Supp. 331 (S.D. Ala. 1977).

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## 16B C.J.S. Constitutional Law § 1203

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### Constitutional Law

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### PART V. Privacy, Familial, and Procreation Rights

#### XIV. Right of Privacy

##### B. Applications to Particular Interests

##### 3. Independence in Decision-Making

## § 1203. Abortion decisions—Rights of minors

[Topic Summary](#) | [References](#) | [Correlation Table](#)

### West's Key Number Digest

West's Key Number Digest, [Constitutional Law](#)  1094, 1226, 1237 to 1240

### A.L.R. Library

[Validity, construction, and application of statutes requiring parental notification of or consent to minor's abortion, 77 A.L.R.5th 1](#)

### The right of privacy in regard to an abortion extends to minors.

The right of privacy in regard to an abortion extends to minors<sup>1</sup> under the age of 18,<sup>2</sup> particularly where the minor is living away from home and has made a voluntary and informed decision regarding abortion.<sup>3</sup> In some jurisdictions, a state constitutional right to privacy is not violated by statutes requiring a nonemancipated minor to obtain the consent of a parent or family member

or approval of a court before obtaining an abortion<sup>4</sup> whereas in other jurisdictions, the requirement of parental consent or judicial authorization before obtaining an abortion is deemed to infringe on such right.<sup>5</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Senate bill which amended statute dealing with consent required for an abortion to be performed on a minor, and delineated civil and criminal penalties for any violation, was unconstitutional in violation of the constitution's single subject rule; each of the four sections lacked a common purpose and were not germane, relative and cognate, and although they all related in some way to abortion, the broad sweep of each section failed to cure the single subject defects in the bill. [Okla. Const. art. 5, § 57](#); [63 Okla. Stat. Ann. §§ 1-737.7 to 1-737.16](#), and [1-740.4b](#). [Burns v. Cline](#), 2016 OK 99, 382 P.3d 1048 (Okla. 2016).

## [END OF SUPPLEMENT]

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### Footnotes

- 1
 

U.S.—[Foe v. Vanderhoof](#), 389 F. Supp. 947 (D. Colo. 1975).

Miss.—[Pro-Choice Mississippi v. Fordice](#), 716 So. 2d 645 (Miss. 1998).

**Effect of coercion by school on minor parent**

U.S.—[Arnold v. Board of Educ. of Escambia County Ala.](#), 880 F.2d 305, 55 Ed. Law Rep. 68 (11th Cir. 1989).
- 2
 

U.S.—[Foe v. Vanderhoof](#), 389 F. Supp. 947 (D. Colo. 1975).

**No distinction**

Pregnant woman under 18 years of age cannot, under law, be distinguished from one over 18 years of age in reference to fundamental, personal constitutional rights.

U.S.—[Coe v. Gerstein](#), 376 F. Supp. 695 (S.D. Fla. 1973), *aff'd in part*, 417 U.S. 281, 94 S. Ct. 2247, 41 L. Ed. 2d 70 (1974).
- 3
 

U.S.—[Foe v. Vanderhoof](#), 389 F. Supp. 947 (D. Colo. 1975).
- 4
 

Ill.—[Hope Clinic for Women, Ltd. v. Flores](#), 2013 IL 112673, 372 Ill. Dec. 255, 991 N.E.2d 745 (Ill. 2013).

Miss.—[Pro-Choice Mississippi v. Fordice](#), 716 So. 2d 645 (Miss. 1998).

**Parental involvement in decision**

States have legitimate interest in encouraging parental involvement in their minor children's decision to have an abortion.

U.S.—[City of Akron v. Akron Center for Reproductive Health, Inc.](#), 462 U.S. 416, 103 S. Ct. 2481, 76 L. Ed. 2d 687 (1983) (overruled on other grounds by, [Planned Parenthood of Southeastern Pennsylvania v. Casey](#), 505 U.S. 833, 112 S. Ct. 2791, 120 L. Ed. 2d 674 (1992)).
- 5
 

Alaska—[State v. Planned Parenthood of Alaska](#), 171 P.3d 577 (Alaska 2007).

Cal.—[American Academy of Pediatrics v. Lungren](#), 16 Cal. 4th 307, 66 Cal. Rptr. 2d 210, 940 P.2d 797 (1997).

**Significant restriction on a minor's right of privacy**

Fla.—[North Florida Women's Health and Counseling Services, Inc. v. State](#), 866 So. 2d 612 (Fla. 2003).